

CRIMINOLOGY and PENOLOGY

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Book One
CRIMINOLOGY

Part I
THE PROBLEM OF CRIME AND CRIMINALS

Chapter I

CRIME AND CRIMINALS

The criminal and his deeds have excited the interest of mankind from time immemorial. The immortal Homer has described for us in noble poetry the degenerate Thersites. The tragedy of Hamlet centers about a crime. The character of Shylock provides the dark background for the lofty character of Antonio and the bright courage and facile ingenuity of Portia. The criminality of Iago gives distinction to an otherwise uninteresting character. In fact, books have been written on the criminals delineated by Shakespeare. So the catalogue of authors who have written about criminals might be extended to include Dickens, Zola, Victor Hugo, and a host of modern novelists, to say nothing of A. Conan Doyle and other writers of detective stories. This interest in crime is attested also by the large place given to the subject in our daily newspapers. People are interested in human conduct; the more extraordinary the conduct the greater the interest.

WHY ARE WE INTERESTED IN THE CRIMINAL?

A part of this interest may be explained by the attention people give to bizarre behavior of any sort. Most of us are so habituated to the standards of conduct approved by society that the variant individual stands out clearly in the society of which he is a part. However, interest in the unusual explains society's attention not only to the criminal, but also to the hero, the magician, the sage, and the victor in a race. The criminal is only one variety of several. It has always been so. Is it not suggestive that the early literature of many peoples glorifies bloodshed and rapine? The writers of the ancient literature of Israel make a hero out of David, who slew the Philistine, and who later was an outlaw and did not hesitate to live off the country.¹ Jacob stands out as one of the patriarchs; yet the author of the story takes a certain delight in picturing the cunning way in which he cheated Esau out of his birthright and overreached his father-in-law, Laban, when the latter had played a trick on him in giving him to wife the unattractive daughter Leah, instead of the beautiful and beloved Rachel.² *The story of Burnt Njal*, one of the Icelandic sagas, glorifies violence, even though committed by a criminal against the increasing

¹ I Samuel, 17:50; 18:7; 22:1-25:13.

² Genesis, 27:1-46, 29:21-35; 30:37-43.

control of society.³ Northfield, Minnesota, is a beautiful small city, the seat of two good colleges. Years ago it was the scene of the robbery of a bank by the Younger and James brothers. In the Mississippi Valley few know of the colleges located at Northfield, but many know that it was the scene of that robbery. The press gave wide publicity to the robbery, and thousands of copies of a book describing the exploit of the robbers were sold, but the colleges have received very little publicity. Why? Because the behavior of the teachers and students of the educational institutions accorded with that accepted by society, while that of the robbers was strikingly variant; because the people are more interested in a daring crime of that sort than they are in the constructive work of educational institutions.

³ While man's life is now less replete with danger from violence than in other periods of history, he is still confronted with situations that he has learned to define as dangerous. There are at least two ways in which he may react to these situations, each dependent upon the interaction of his personality with the particular situation. In either case there is tension that must be released. He may define the situation as something from which to escape. If so, he flees, exhibiting the usual signs of cowardice. On the other hand he may define the situation as a challenge; he resolves the tension by exhibiting courage. He experiences the thrill of high resolve and the accompanying activities that release nervous tension. The thrill that results from having faced danger courageously is, of course, of social origin. (Whatever tonal effects such experiences may have on our biological equipment are important only as they are related to the social factors.) While the thrill may be forthcoming in isolation, it is definitely augmented by the plaudits of the multitude; instance the exploits of the Roman gladiators or the football player, goaded on to greater effort by the approval of the onlookers. Thus the bright face of danger possesses a challenge. In the criminal, *people vicariously experience the danger and the concomitant thrill of approval for accomplishment in face of this danger.*

More important is the *feeling of danger* to ourselves and our property that the criminal induces. We feel that this being menaces social stability. He threatens our established order. Accustomed to civilization, we are psychologically upset by the reversion of the criminal to barbarism. But, since it is only remotely possible that the criminal may harm us, why is it that we resent his antisocial act? There are two answers possible. When Haman set out to destroy all the Jews in the kingdom of Ahasuerus, Mordecai sent word to Esther, the queen, "Think not with thyself that thou shalt escape in the king's house, more than all the Jews."⁴ Since she was a member of the hated people, the contemplated acts of Haman

³ Sir George W. Dasent, *The Story of Burnt Njal*, Everyman's Library, Episodes 65, 71-76.

⁴ Esther, 4:13.

were likely to reach her also. Since the criminal, for example a robber, is at war with orderly society, there is no reason to believe that any particular member of society will certainly escape his depredations. The danger threatens all, although there is little likelihood that the robber will attack all members. We may be interested and perhaps shocked by a brutal murder of an Italian in a vendetta in the Italian quarter of our city or of a loose woman by a "Jack the Ripper" of the Whitechapel district of London, but it does not cause us to fear for ourselves or our own. "In contrast with this [the Whitechapel murder], take the case of a commonplace burglary. Never a night passes that some crime of this kind is not committed in the metropolis. No one can be certain, as he shuts his door and lies down to sleep, that the sanctity of his home will not be thus outraged before morning. And in every instance there is a real element of danger to the occupants, for the burglar is generally ready to resort to violence if disturbed in the commission of his crime."⁵

Moreover, a criminal act arouses our resentment by reason of *our sympathy with the injured member of the group*. Says Cooley, "We understand the criminal act, or think we do, and we feel toward it resentment, or hostile sympathy. . . . If one man strikes down another to rob him, or in revenge, we can imagine the offender's state of mind, his motive lives in our thought and is condemned by conscience precisely as if we thought of doing the act ourselves."⁶ Sympathy for the injured, and conscience, a product of organized social life, stir our resentment. We ourselves feel the injury. This resentment, however, is not felt if the victim of the act is not a member of the social group or class to which we ourselves belong.

Is not our interest in the criminal related more or less closely to *our interest in the rebel*? Why is it that Euripides' Prometheus, Milton's Satan, and Goethe's Faust grip our imaginations? All were rebels against omnipotent Deity. All stand out for pride, high intellectual qualities, and daring in the face of certain punishment. The tragedy of impotent daring against overpowering might make Satan and Faust characters who, with all their socially disapproved propensities, excite our admiration. Why? Is it because of their bold disregard of consequences? Is it because we admire perversity, or courage? Is it not rather because that high courage, that disregard of consequences, those intellectual qualities are linked with enterprises against authority, however benevolent? Humanity has not been civilized, unified into obedient groups without strong pressure on individual initiative and the inborn impulse to vary. Social control has not been achieved without violence to many human and, under certain conditions, helpful tendencies to swerve from the conventional. Certain criminals are rebels against social control. In some ways they are akin to the geniuses who break new roads to human

⁵ Anderson, *Criminals and Crime* (London, 1907), p. 4.

⁶ Cooley, *Human Nature and the Social Order* (New York, 1902), p. 387.

freedom through the barrier of social restraint. There is just enough of the rebel in many of us to respond with interest to the antisocial activities of the criminal.

Freud has suggested another theory of our interest in the criminal and in his punishment. That theory is that each of us is conscious of a wish to perform a forbidden act; we envy the individual who has dared to commit the tabooed deed; but in order to keep down the temptation to do the forbidden thing the individual must be despoiled of the fruit of his daring. "Not infrequently the punishment gives the executors themselves an opportunity to commit the same sacrilegious act by justifying it as an expiation."

SCIENTIFIC INTEREST IN THE CRIMINAL

With the development of the sciences that throw light upon human conduct, such as biology, psychology, psychiatry, and sociology, has come an increasing *scientific interest* in crime and the criminal. To the interest aroused by the strange, the heroic, and the fearful has been added the curiosity as to the roots of antisocial conduct. Moreover, an increasing understanding of human motivation has led to the most revolutionary and interesting experiments in treating the criminal. Therefore in increasing numbers both the scientific and the practical minds have been attracted to this problem. As men have come to see that almost any science has relationship to the problems of human behavior, they have developed concern with this aspect of conduct. The medical man is inquiring how abnormal physical conditions affect conduct; the analytical chemist is summoned from his laboratory to make analyses of materials used in bombs for the purpose of ascertaining whether the accused is guilty; the toxicologist is called upon to examine the organs of the dead to ascertain whether poison was used to effect death, and the physiological chemist to analyze the blood for purposes of identification. While the criminal makes use of modern scientific processes to commit crime, society is calling upon the scientists to discover him, prove him guilty, and treat him. Man's social activities are the product of his own make-up and the circumstances of his life. He can be explained as never before. The task of reforming him can be attacked with an intelligence and hope never before possible.

Moreover, *ethics and religion*, as they abandon their metaphysical and absolute bases of former times, are coming to see that the criminal is of interest to them. They have had a share in the responsibility of explaining the criminal, and they have something to contribute to the program of prevention and reformation.

Lastly, *the economist and the business man* have come to see that the

criminal is of interest to them. The economist cannot be blind to the economic situations that stimulate to a criminal career. The business man is coming to recognize that since crime is a costly burden upon society he can no longer be indifferent to the problem.

The sociologist no longer thinks of crime as something apart from the patterns of conduct resulting from the interaction of human beings living together in what we call society. He sees that crime equally with socially approved behavior grows out of the interplay of human personality with the social circumstances in a given society. Thus the sensational interest in crime in these times is supplemented by a scientific interest.

In striking contrast to the public's interest in the criminal is its indifference to the treatment of the offender. Yet we make a mistake if we think that what we do to the prisoner, once he is disposed of by the court, is not of importance to the public. Were he finally disposed of when he goes to prison, perhaps it would be of less public concern how we treat him. But usually the prisoner comes out from prison after a time and reenters society. Often he avenges himself upon society for its neglect of him while in prison, for the injustice done him on his release. If his imprisonment has not meant reformation, he comes out worse than when he entered, craftier than ever, embittered by the experience, or trained in crime by association with more skilful criminals. If he has been hardened by his experience in prison rather than socialized in his attitude, he is a greater menace to property and person than before. Therefore the public should be concerned with what is done to the criminal in prison. What are the effects of this treatment upon his mental processes? Has he learned his lesson in self-control, or has he learned the arts of the more hardened offenders? Does he come out with the determination to "go straight" or with the determination to "get even" with society? Has he been trained to be an honest citizen or a rogue? Has he been trained to earn an honest living by means of newly acquired industrial skill, or has he been exploited by the state or, worse still, by a contractor who bought his labor cheaply? Has his family been held to him, or has he been shut away from them so that the only ties which could help him no longer bind him? Too often he has been depressed and crushed; the iron has entered into his soul; the injustice of his treatment has embittered his spirit. His emotional nature, instead of being studied, understood, and handled so as to make him a good citizen, has been mishandled so that he is less fitted to social life than when he went in as a condemned man. It is, therefore, of infinite concern to society how the criminal is treated. Penology should be of the most vital interest to those concerned with the social welfare.

A prison, where the will of God men must await—

Where youth and age must ever nod to frowning fate;

Where tongues are mute, and men arise to new-born wrong,

While earth, revealed to cloudless skies, is thrilled by song.

CRIMINOLOGY AND PENOLOGY

No morn, no noon, no night, no dawn where prison bars
Blot out God's plan; where man must fawn or walk with scars.
O life! boon of the Power above, I've tarried long
Far from the ways where life is love and all is song.

I know the awful chill of stone, the convict's tears;
How blood—yes, life—may not atone for sins of years.
Full well I know, and would forget, the price of sin—
And oh, how sweet to know the debt is nearly in!

But hold—the debt is never paid; the record stands.
The sins of life can never fade as mankind plans.
The hate, the tears, the walls, and blood—can Time efface?
Can Hope and Love again rebuild where thrived Disgrace?

—From Stell and Null, *Convict Verse* (Fort Madison, Iowa, 1908).

QUESTIONS AND EXERCISES

1. Analyze the roots of the public interest in the Loeb-Leopold murder. (For the case see *Journal of Criminal Law and Criminology*, Vol. XV, pp. 347, 348, 360, 380, 391, 395, 398, and 400.)
2. At the present time does scientific interest in the criminal bulk as large as non-scientific interest? Why?
3. Look over the items concerning crime in any newspaper and explain why they are "news."

Chapter II

DEFINITIONS: WHAT IS CRIME? WHAT IS A CRIMINAL?

One of the hall-marks of science is preciseness of definition. One of the reasons for the differences of opinion that sometimes mark discussion in the social sciences is that the participants have not clearly defined their terms. That is even more true of the confusion often to be observed in the discussion of human behavior in the press and in conversation. One often hears some one say, "It is a crime," when discussing an action by some person or a condition existing in a community. What that person probably means is, "It should be a crime." Even in serious discussions looseness of terms is sometimes to be found. For example, recently in serious meetings of national social science associations we have heard about "white-collar crime." Just what does the term mean? Do those who use it intend to designate those acts by an individual whose business or profession allows him to dress better than those who are engaged in common or skilled labor? If so, it would include forgery, embezzlement, and many other acts already under the ban of the statutes. Or do they mean those acts condemned by the law committed by the executives of large corporations, or those acts committed by such executives not yet banned by positive law but believed to be inimical to the general welfare? If used in serious discussions, the term should be exactly defined.

Legal Definitions. From the legal point of view any action by an individual in contravention of a law is a crime. Under this definition the old Roman axiom is true that "without law there is no crime." In the published statistics of crime this is the definition that must be kept in mind.

Before 1920 it was lawful in the United States to make and sell intoxicating beverages; then under Prohibition it became a crime. What happened in those few short years to make an act that was highly profitable and that was looked upon with a good deal of toleration, a crime? Nothing but the enactment of a law. Why, then, was it a crime in, say, 1925 when it was not in 1920? This question reveals that in the absence of a belief on the part of that moiety of a social group having the power to enforce its belief that an act is injurious to the group, and in the absence of its decision to put an act under a positive ban, there is no difference between the legal and the sociological definitions of crime.

Even had a group standards whereby it could determine whether an act was injurious, the controlling portion of that group would have to be persuaded that the act was injurious and would have to put it under the ban.

However, there are kinds of conduct that have not been put under positive repression but that can be shown to be inimical to the welfare of the group. For example, the use of alcoholic beverages by certain individuals was known to be socially injurious. In this country in 1920 the making and sale of such beverages were legally tabooed, but because a large proportion of the population did not believe that the use of such drinks by some people resulted in damage to the group, and because the law provided no means of discriminating between their use by those who could drink without injury to the group and those who could not do so, a majority of our people decided that the evils of Prohibition were greater than permission of the manufacture, sale, and use of intoxicants under regulation. Or again, for example, it can be demonstrated that freedom of organization of corporations under the law and free sale of corporate securities often resulted in swindling people out of their money. Once Congress and the state legislatures became convinced that social injury resulted, they passed laws regulating the organization of corporations and the issue and sale of securities. Hence we have laws regulating security exchanges, dissolving holding companies, and the sale of securities. Whenever observation can show that an act is injurious to society, sociologically that act is criminal, whether or not it has become so legally. In case such an act has not been banned by those in authority in the group, it is not a legal crime, but it is a sociological crime. Observe, however, that to be a sociological crime, it must be clearly shown that it is injurious to society.

The Sociological Definition. It was the consciousness that the legal concept of crime does not go deep enough to satisfy the demands of developing social science that led Garofalo to attempt "a sociologic definition of crime." Garofalo was seeking to formulate a definition that would "designate those acts which no civilized society can refuse to recognize as criminal and repress by means of punishment."¹ He applied to such an act the term *natural crime*. But what constitutes a "natural crime"? Garofalo believed that an analysis of the acts designated as criminal by civilized societies showed that offense of certain sentiments of mankind makes acts criminal. Garofalo stated that the two sentiments offense against which in all ages and among all peoples constitutes crime are those of *probity* and *pity*.² He adds that an act to be criminal must be *harmful to society*.³ These moral sentiments may change from age to age and may vary among different peoples. Nevertheless, whatever their strength and whatever form they may take, an offense against them con-

¹ Garofalo, *Criminology* (Boston, 1914), p. 5.

² *Ibid.*, pp. 40 ff.

³ *Ibid.*, p. 51.

stitutes a "natural" crime. In Garofalo's thought this "natural" definition of crime is also a "sociologic" definition. Garofalo's definition of crime is essentially: ⁴

Crime is an immoral and harmful act that is regarded as criminal by public opinion because it is an "injury to so much of the moral sense as is represented by one or the other of the elementary altruistic sentiments of probity and pity. Moreover, the injury must wound these sentiments not in their superior and finer degrees, but in the average measure in which they are possessed by a community—a measure which is indispensable for the adaptation of the individual to society."

Carefully analyzed, does Garofalo's definition satisfy the canons of a sociological definition? What does he mean by "natural"? If he means that the act offends sentiments that are biologically rooted in human nature, then how can the definition be called "sociologic"? If what we are seeking in a sociological definition of crime is a definition based upon ideals and sentiments that form a part of what is sometimes called the "social mind," then we must take into consideration the beliefs and standards of society, no matter how these beliefs and standards are produced, whether generated by the animal instincts or by social custom and tradition. Moreover, in view of the lack of objective tests of harmfulness in many ages of mankind's development, the sociological definition of crime will hesitate to say that crimes are actually harmful to society, as Garofalo seems to state. Let us rather say that, instead of crime being an act that contravenes an elementary, universal human sentiment and that is socially harmful, *crime is an act that has been shown to be actually harmful to society, or that is BELIEVED to be socially harmful by a group of people that has the power to enforce its beliefs and that places such act under the ban of positive penalties.* This group believes it harmful, sometimes because it offends the sentiments of probity or pity, but often for other reasons. Instead of emphasizing the origin of the notion of crime in reaction against a sentiment such as probity or pity, we should stress its origin in the group fear of its harmfulness and in the desire for social protection from the violation of the social standards of the dominant group, however those standards arise, and in that protective moral coloration denominated by Ross as "ethical dualism."

The essential elements of this definition are (1) belief that an act is socially harmful (2) by a group that has the power to enforce its belief by certain penalties and (3) actually bans such an act with penalties. This definition does not assume that the belief arises in any particular way. The belief may be the result of certain inherent tendencies of human nature such as instincts or may be the outcome of customs, traditions, taboos, ideals, and ideas derived from the experience of the race or people. Since beliefs are in part the result of social experience, and since they are means of social control, this definition may properly be called a sociological definition. The belief that the thing forbidden is

⁴ *Ibid.*, pp. 33-34.

harmful may be true or untrue. That question cannot be settled in the absence of standards scientifically established.

Furthermore, the question as to how the belief that an act is harmful to society arose is of no practical importance. While in some cases an act may be made a crime because it offends the sentiments of probity and pity, there are cases in which such offense is not the motivating cause. For example, the breaking of certain taboos in primitive society, violation of which entails group punishment, certainly does not offend such sentiments. Thus, the king of Onitsha may not quit his palace on pain of death or the surrender of one of his slaves to be executed in his presence.⁵ Violations of many of the taboos to be found in primitive society were punished by death. Most of the taboos have their root in fear of the consequences to an individual or a group. The important motive back of the sanction for the enforcement of a taboo is the *belief* that the violation of the taboo is harmful to society.

Again, the belief in the harmfulness of conduct may be enforced by the whole group or by any part of it which is in a position of superior power. If the belief is held by practically every member of the society, it is probable that, except in a few cases, moral sanctions alone will be employed. The mores of the group will determine conduct. Only an especially flagrant violation of the mores will demand positive methods of punishment. Most of the taboos of primitive peoples are enforced in this way. The violator will in his own person suffer the punishment of magic or of the gods. But if his act endangers others, and especially if his act is believed dangerous to the entire group, then he, and often his relatives and his property, must be destroyed. On the other hand, if society is split up into classes, the beliefs of the dominant class will determine what acts are crimes and what shall be the punishments for such acts. At one time the dominant class is the aged, at another the men, again the conqueror, or an economic class, and sometimes the religious class. In such a case the inferior classes may not believe that the act is dangerous to themselves or to their group, but nevertheless the dominant party enforces its belief. Hence the significant thing is that an act is made criminal by the group that has the power to enforce its beliefs. We see the application of this principle both in primitive and in civilized societies. In the latter it is illustrated in a fugitive slave act, child labor laws, and prohibition laws.

In an absolute despotism, the despot with or without the assent of a small group of his henchmen; in Nazi Germany, the Führer and his small coterie of immediate followers; in Fascist Italy, Mussolini and his Grand Guard; in Japan, the Military clique are those who possess the power to determine what acts are criminal and to inflict the penalties for their repression. In a real democracy the majority of voters possess that power. There are certain acts that a considerable proportion of the community

⁵ Frazer. *The Golden Bough* (New York, 1922), p. 200.

recognizes as harmful to society, such as the manipulation of the deposits in banks by the bankers for their own private profit, clever management of the affairs of an industry or a commercial concern to the detriment of the mass of small stockholders for the benefit of the "insiders," and many others of like nature. But because a sufficient number of the people of the country who have power adequate effectively to condemn such practices have not put such acts under the ban of positive penalties, those acts are not crimes. Some think that sociologically such acts are crimes because they are injurious to society, but not enough of us have yet come to such a belief as enables us in a democracy to enforce it.

Relation of Crime to Immorality. The line that divides crime from vice is a bending, irregular one dependent upon the beliefs of the times, the stage of moral development reached by a people, and the degree of critical analysis that has gained rather wide acceptance. Most crimes are looked upon as immoral. It is both criminal and immoral to commit murder in most situations, yet when one commits murder in self-defense or when one kills a man in battle, the act is looked upon as a moral act by most people. It is immoral to lie, but legally it is not a crime so long as one does not swear to it and thus commit perjury. Vice has been described as an injury done to oneself through violation of natural law that affects others only indirectly, if at all.⁶ Yet some vices and immoralities do affect others injuriously. For example, intemperance is a vice; yet generally the inebriate's family suffers, and often so do his neighbors. The distinction is not that a vice affects the vicious individual alone, but that society has not yet come to hold the belief strongly that such an act is so harmful to society that positive measures of repression must be used. As long as acts are immoralities, or vices, society depends on the indirect methods of social ostracism, loss of social standing, conscience, and regard for the esteem of others to control such actions.

Moreover, the social judgment of the seriousness of the act explains why what may once have been considered a crime may no longer be treated as such. When it was believed that the slightest disrespect to parents entailed danger to the society, it was possible to have a law which said, "He that curseth father or mother, let him die the death."⁷ The Code of Hammurabi provided, "If a man has struck his father, one shall cut off his hands."⁸ To-day such a son would certainly be thought a very ungrateful child, but no such penalty would be visited upon him, and in many states he would not be considered a criminal. On the other hand, some of the things that in other days or among different people were looked upon as matters of comparative indifference, or perhaps only as immoralities, have now become crimes. For example, some of the patriarchs of the Old Testament are said to have had more than one wife.

⁶ *Wines, Punishment and Reformation*, Rev. Ed. (New York, 1910), p. 11.

⁷ *Exodus*, 21:17; *Matthew*, 15:4.

⁸ *Hastings and others, Dictionary of the Bible*, Extra Vol., "Code of Hammurabi," Sec. 195.

The same is true in many lands to-day. This custom was then not looked upon even as immoral. To-day in civilized societies to have more than one wife at the same time constitutes the crime of bigamy.

Again as illustrations that both morals and crimes change with the development of society may be cited some of the crimes possible only in such a highly organized system of business as we find in the Western world. Drawing a check on a bank in which you have no funds would be impossible without a banking system in which checks are used. Taking an apple from a farmer's orchard is only a boyish prank, but let a boy take one from a fruit stand in the city and he will be a subject for the juvenile court.

Crime and Sin. Originally religion had closer relations to crime than to-day. The conception that the welfare of the group as well as of the individual was closely bound up with the favor of the tribal god or gods operated to produce the belief that any offense against the god was an offense against society. Hence acts of irreverence or sacrilege, and in later times even of heresy, were made crimes, that is, they were believed to be dangerous to the welfare of the group and therefore were forbidden and repressed by severe penalties. Thus in the Code of Hammurabi, coming probably from the latter part of the third millennium B.C., it is provided that "if a votary, a lady, who is not living in the convent, has opened a wine-shop or has entered a wine-shop for drink, one shall burn that woman."⁹ Likewise in the Levitical legislation in the Bible we have the law, "And the daughter of any priest, if she profane herself by playing the harlot, she profaneth her father: she shall be burnt with fire."¹⁰ Moreover, it was commanded that "thou shalt not suffer a sorceress to live."¹¹

Here it is evident that the concept of crime has a religious root. These are only illustrations of many sins which were made crimes by ancient legislation. We call them and similar conduct sins to-day, because in the course of social development we have come to separate religion from the state and we no longer feel that in every case a sin is also a crime against the dominant social group. To-day in most civilized societies heresy may cause a man to lose his connection with organized religion, but it is no longer considered a crime. Some sins, however, remain in the category of crimes. For example, public blasphemy, acts of sacrilege, and disturbing religious meetings are punished by law. But to-day they are crimes not because they are sins but because they are attacks upon the theory widely held that freedom of religious worship is a fundamental of a well-ordered society.

On the other hand, there are some crimes which are not looked upon as sins. Using the term *crimes* to cover all acts or omissions subject to

⁹ Hastings, *op. cit.*, p. 602, Sec. 110.

¹⁰ Leviticus, 21:9.

¹¹ Exodus, 22:19.

positive penalties, we may cite as an illustration of the last statement the fact that in some religions fishing on Sunday is looked upon as a sin, while fishing out of season is not, although the later is punishable according to law and the former is not.

CLASSES OF CRIME

Several classifications of crime have been worked out, varying with the stage of social development reached by a people and with the recognition of the various social interests for the protection of which government is organized.

Until the rise of sociology most of these classifications were based upon legal grounds. Sometimes the classification was based upon the nature of the act, for example, homicide and theft, or the classification was determined by the procedure used in trying the criminal or by the punishment meted out to him. Until now it has been customary to say that the classifications are either legal or functional.¹² Both of these are really legal classifications, the legal based upon the nature of the crime, the functional upon the ends to be secured by punishment.

In the evolution of criminal law there have come to be recognized two or three classes of crime. In the English common law three classes of crime were distinguished: (1) treason, (2) felony, and (3) misdemeanor. Originally felony included treason, but in the course of time treason came to be recognized as a special kind of felony. Originally a felony was conceived to be a crime that could not be compounded for. Misdemeanors were looked upon as crimes of less gravity than felonies. Some such classification is to be found in the law of most civilized states.¹³ In the United States, except Louisiana, the criminal law follows the English common law classification. In most of the states the gravity of the offense is indicated by the punishment. Felony is punished by death or imprisonment or by imprisonment and a fine. Misdemeanors are punished by imprisonment or fine or both. The length of imprisonment and size of the fine are intended to correspond to the gravity of the offense.

However, this legal distinction involves us in certain difficulties. (1) With rapid changes in social values, what to-day is looked upon as a serious crime, to-morrow may be considered of trifling importance. If changes in the law are slower than in values, a sense of injustice arises or, as an alternative, the strict law is not enforced. (2) In this country what may be defined as a felony in one state may be only a misdemeanor in another, and vice versa. And (3) even in a single state often the penalties prescribed in the statutes for felonies and misdemeanors respec-

¹² Parmelee, *Criminology* (New York, 1918), pp. 264-270.

¹³ Thus, in the French penal code offenses are divided into *crimes*, *delits*, and *contraventions*, with penalties corresponding. Such a classification is to be found in most Continental codes. In the Dutch code of 1881 and the Italian of 1889 there are but two classes, *delits* and *contraventions*.

tively do not denote the relative seriousness of these two classes of offenses.¹⁴ This situation results from the Classical theory of fitting the punishment to the crime rather than to the criminal.

In the development of law many acts that were once crimes have become torts, or matters of civil process for the recovery of damages. Some felonies have become misdemeanors, on the one hand; and on the other, some misdemeanors have been made felonies by statute. All such changes register modifications in social judgment as to the injuriousness of the acts and as to the proper methods of preventing such acts.

With the development of a more careful study of society, critical attention has been given to crime as a social phenomenon. With the growth of sociological theory attempts have been made to relate crime to certain sociological concepts. In considering how to deal with crime and criminals it is necessary to take into account human nature and the motives, interests, and habits of people, their customs and social institutions.

Any sociological classification of crimes will raise the question as to what interests are believed to be menaced. A theory of social interests closely related to the problem of criminal repression is that propounded by Roscoe Pound. While his theory is confessedly built on a study of the legal measures that have been worked out for the preservation of society and therefore may ignore some interests that are protected by non-legal methods, it is significant in that it is built on the theory that "legal phenomena are social phenomena." Moreover, his theory is formed under the conviction that "...for jurisprudence, for the science that has to do with the machinery of social control or social engineering through the force of politically organized society, it is no less true that individual interests are capable of statement in terms of social interests and get their significance for the science from that fact."¹⁵ These interests he classifies as (1) interest in the general security, (2) interest in the security of social institutions, (3) interest in the general morals, (4) interest in conservation of social resources, (5) interest in general progress, and (6) interest in the individual life.

Under the first class he places interest in the general safety, in the general health, in peace and public order, in the security of acquisitions, and in the security of transactions. Under the second he cites interest in the security of domestic institutions, of religious institutions, and of political institutions. Under the third he classifies all social demands to be secured against acts or courses of conduct offensive to the moral sentiments of the body of individuals in society at a given time. The attempt to establish such security he sees in legal policies against dishonesty,

¹⁴ See Mikell's description of the situation in Pennsylvania in the report of the so-called Ruth Commission, cited in Barnes and Teeters, *New Horizons in Criminology* (New York, 1943), pp. 331-332.

¹⁵ Pound, "A Theory of Social Interests," *Publications of the American Sociological Society*, Vol. XV, p. 32.

corruption, gambling, and other things of immoral tendency. Under the social interest in conservation of social resources he places the demand that the goods of existence shall not be wasted, and the demand that dependents, defectives, and delinquents shall be trained, protected, and reformed. Our laws recognize these interests. So also do the laws recently enacted providing for the rehabilitation of the maimed. Under the social interest in general progress he classifies interest in economic progress, in political progress, and in cultural progress. Under the last he classifies two different forms, (a) the interest which demands that the individual will shall not be subjected arbitrarily to the will of another and (b) the interest resulting in the policy that all restraint and legal enforcement of the claims of others shall leave secured to the individual the possibility of a human existence.

Sociologically these interests are more or less clearly conceived by society, and any act that threatens their realization calls out repressive measures. Hence it is not difficult to see the relation of what we call crimes to this classification of interests. The law on the one hand expresses the will of the dominant group to conserve the integrity of these fundamental social interests. Moral and conventional taboos are other methods of expressing society's determination to safeguard them. In the light, then, of these social interests consciously held by society and defended by the various means of control, such as punishment, moral restraint, and conventional repressions, into what classes may crime be divided?

1. **Crimes Against Property.** Growing partly out of interest in the general security, partly out of group interest in the welfare of the individual, and partly out of the social interest in the security of social institutions are the crimes against property. While historically crimes against private property have been looked upon as an individual matter, so that the wronged man revenged himself upon the aggressor as he might, very soon it was dimly seen that the matter is also of social concern. The lone individual might not be able to secure return of his property or compensation for it. Moreover, even if he availed himself of the assistance of his kindred, feuds might arise that threatened the general security. Hence, the dominant group took matters into its hands and made some attempt to repress such acts. As ways of doing business became more complex and economic devices were invented, the range of crimes against property was enlarged, and the protective or repressive measures multiplied.

2. **Crimes Against Public Peace and Order.** The crimes of treason, sedition, disturbance of the public peace, and disorderly conduct developed partly out of demand for the general security and partly out of the interest of the group in the stability of institutions. As soon as men clearly saw that only in the stability of the group did an individual have any guarantee for his own safety, the security of the group became

a matter of paramount importance. Acts that threatened the peace of the group and the established order of society were condemned and visited with what was considered appropriate punishment. As the complexity of social life increased, more and more kinds of conduct were believed to threaten this interest and so were outlawed.

3. **Crimes Against Religion.** In early societies these crimes arose out of the feeling that conduct that offended the deity threatened the general security. Primitive religious rites were often conceived of as a means of establishing communion or fellowship between the group and its god. Men and the gods were members of the same blood group; they were kindred. If famine, pestilence, disaster in war, or other evils came upon the group, it was a sign of the god's anger. Sometimes the communion between the god and his human fellows could be established by a sacrificial meal, but often only by the sacrifice of the offender himself.¹⁶ Sometimes the impiety was wiped out by destroying not only the culprit himself but all of his kindred as well.¹⁷ Says Pound, "Sacrifice of the impious offender who has affronted the gods and excommunication of the impious offender whose presence threatens to bring upon his fellows the wrath of the gods are in part at least the originals of capital punishment and outlawry."¹⁸ While in later times the close connection between offended deity and the group threatened with disaster is less close, nevertheless there yet remains a conviction in many quarters that impiety against God is a menace to the general security.

Furthermore, apart from the active fear of the social results of acts of impiety, in both primitive and modern societies custom and tradition count heavily. It is felt that impious acts threaten venerable institutions like the church; therefore such conduct is punishable. When religious institutions align themselves with morals, the social interest in general morals makes conduct that affronts religion criminal.

4. **Crimes Against the Family.** Such crimes include not only bigamy, embezzlements of estates, and such like, but also kidnapping, illegitimacy, adultery, neglect of children, desertion of family, neglect to provide, and certain aspects of prostitution. Any conduct that threatens the stability of the family tends to become a crime when society becomes conscious of the social interest in domestic institutions. That there is difference of opinion as to whether certain acts connected with sex should be classified as crimes or simply as vices is due to the question as to whether the act is charged with a social interest. It is sometimes claimed that sexual vice is a matter that concerns only the person or persons involved. However, whenever conduct affects society's interest in the family institution or its interest in the individual to such a degree that it is believed to endanger that interest, society makes that conduct a

¹⁶ See Robertson Smith, *The Religion of the Semites* (London, 1901), pp. 254-258.

¹⁷ II Samuel, 21:1; I Samuel, 2:27 sq.; Joshua, 7:1,11.

¹⁸ *Op. cit.*, p. 36.

crime. That is why, as society comes to see that some of its interests are endangered by prostitution or drunkenness, it places such conduct under positive ban. So it has come about that the labor of women at certain periods and under conditions that prevent their proper attention to the care of their families is forbidden with penalties. Once a man could abandon his wife and children with impunity; to-day if he does so he is subject to punishment. Very early, adultery became punishable conduct, partly because society saw that one of its fundamental institutions was thereby endangered.

5. **Crimes Against Morals.** Certain moral sentiments develop in the history of human society. How they develop is not our present concern. Certain of these moral sentiments become of such interest to the whole group that conduct outraging them is made a crime. It is felt that the protection of these sentiments is of sufficient importance to demand positive protection through penal methods. For example, cohabitation with any near relative or with certain relatives of near relatives and sodomy were forbidden by the Levitical legislation.¹⁹

The laws to be found on the statute books of some states to-day against women wearing men's clothes and vice versa in part grew out of society's interest in general morals. That in some cities people going to or coming from bathing beaches are compelled to wear clothing over their bathing suits comes from the same social interest. Legislation against those who send obscene matter through the mails, the regulation of performances in theaters and of prize fights, and all laws aimed against the corruption of public morals rest on the same social grounds. Whenever society believes that its interest in the general morals of the people is threatened by certain acts, it proceeds to make such conduct criminal.

6. **Crimes Against Conservation of the Resources of Society.** When society becomes self-conscious enough to recognize menaces not only to its own immediate welfare but also to the welfare of future generations, it proceeds to visit punishment upon those whose waste natural resources. Hence acts of this kind are made criminal acts. This social interest is manifested in the prohibition of such acts as cutting unripe timber in forest preserves, taking fish and other game out of season, wasting water from an irrigation ditch, wasting natural gas and oil, and other similar acts.

Out of the same class of interests grow such modern crimes as neglect of children, either as to their health or as to their education and moral training. The whole body of crimes against public health—for example, breaking quarantine, refusal to have a child treated for sickness, and contributing to the delinquency of a minor—belongs to this class. While some of these acts spring from other social interests, such as interest in general morals, in the stability of the family, and in the individual, society is in part moved to make such conduct criminal by its interest

¹⁹ Leviticus, 18:6-23; 20:11-13.

in the future of the race. Doubtless as time goes on other acts that now are not looked upon as injurious to the welfare of society will be added.

The kinds of crimes committed in any society depend on the specific features of its organization. The fundamental needs of man's organism are much the same under whatever forms of social organization he may live. We may accept Thomas' four wishes as expressing approximately these needs: the desire for (1) security, (2) response, (3) recognition, and (4) new experience. But how these fundamental urges express themselves depends on how a group organizes its relationships into a systematized structure. Hence the form that crime takes in any given society is determined by its institutions. For example, in a society that sustains itself by fishing or simple exploitation of the soil, purloining of goods will not take the same forms as in a highly complex economic society with banks, investment organizations, corporations commercial and industrial. The type of crime in an agricultural society depending on irrigation is not the same as that to be found in one depending on rainfall, as may be seen by comparing the Code of Hammurabi with the laws found in the codes of the Old Testament. With the rapidly changing economic organization characteristic of modern societies the old customary regulation of trade and industry becomes inadequate, and new laws are introduced to control such relationships. These rapid changes provide opportunities for predatory overreaching of one's fellows. Banking institutions, while providing means of safekeeping of coin and currency, invite new methods of burglarizing. The modern corporation with its limited liability, its power to issue various kinds of securities, the facility by which it may be controlled by a small group of minority stockholders provides almost unlimited opportunities for manipulation of its resources for the benefit of insiders and to the injury of other stockholders and of the bondholders. The device of the holding company provides further opportunities for the concentration of the management in a few hands, who may own a very small proportion of the total shares of the subordinate companies. Railroads have been looted, to the enrichment of the looters and to the loss of those who owned the most of the equity in the company. All kinds of large corporations have been so mismanaged fraudulently that investors in their securities have lost most or all of their investments.²⁰ Thus those shrewd and adventurous enough to manipulate dishonestly the companies they control have enriched themselves by plundering legally or fraudulently the properties entrusted to their care. Such crimes would not have been possible in the Middle Ages in Europe and are not possible now in countries like Central Africa or certain parts of China where modern commercial and industrial organizations have not yet been introduced. These various methods of chicanery were unknown before the development of what has come to be known as "finance capitalism." In the mores which have come down to

²⁰ Meyers, *History of the Great American Fortunes* (New York, 1937).

us in the traditions that governed a pre-capitalistic régime there is nothing adapted to meet the problems presented by modern economic organizations. Hence laws are enacted with the intent of controlling predatory individuals and groups bent on exploiting the opportunities which the new situation presents.²¹

Likewise the relations between employers and employees in modern societies, which were rather well regulated by custom in the Middle Ages, offer opportunities for the exploitation of one's fellows. Under the old handicraft system of domestic economy the employee lived in the same home with his employer, worked with him in the same shop, played with his children. Their relationships were on the personal, face-to-face basis. Each shared the joys and sorrows, the dangers and the triumphs of the other. Under the new machine-age-corporate organization these personal relationships were sundered. Those whose capital furnished the buildings and the machines, laid out the tasks, provided the working conditions, and distributed the products were not in direct contact with the workers. The managers who ordered the lives of the workers often did not own a single share of stock; they were hired by the corporation, and their interests were linked with those of the stockholders rather than with those of the workers. Also the workers knew few if any of the owners of the property. Their interests were now narrowed to their own incomes and working conditions. It was none of their affair if the stockholders received no dividends. The managers likewise tended to disregard the interests of both the stockholders and workers. There was no other limit upon the salaries they were paid than what the influential members of the board of directors imposed. If the managers could be induced to connive with these directors to rob both the workers and the often far-flung stockholders, they were rewarded accordingly. Insiders could manipulate the stock on the stock-market and squeeze out the small-fry stockholders and thus get control of the corporation for a fraction of its value. Thus by "shady" transactions either permitted under the laws governing corporations, or by evasions of what laws were on the statute books, "smart" insiders can plunder and rob stockholders and the public without much danger of discovery and conviction.

These new forms of crime, however, are not confined to questionable manipulations by corporation officials. The changes in economic life are accompanied by changes in religion, philosophy, and morals which affect every social institution, domestic, political, educational, and religious. In all these fields of human relationships old controls weaken, and new, effective agencies of control are slow to develop. Hence the graft in politics, the "rackets" in vice, gambling, racing, certain industries, like construction and laundering, and in the control of labor organizations. Strikes and lockouts accompanied by violence with blood-

²¹ See Arnold, *The Folklore of Capitalism* (New York, 1941), Chs. VIII-XI.

shed and death are characteristic of our day. Lawyers connive with "crooked" politicians, labor organizers, and industrialists to find ways to evade the laws passed for the protection of the public, and to defend the culprits when caught. Police and prosecuting attorneys protect criminals for gain or for the protection of their political bosses.²²

Even the courts have been invaded by corruption. Judges now and then are partners with the big criminals.²³ When they are not actually corrupt, they are so entangled in the political net often controlled by corrupt politicians that the effect is much the same.²⁴

These new forms of crime are the ones which at present largely escape punishment. The prisons for the most part get only the poor and those who commit the age-old crimes. Yet these new forms of crime are probably the most profitable to the perpetrators and the most highly injurious to society.

Thus, while the motives at the roots of crime remain much the same, the forms of crime change with the organization of society. The new types of crime must be met by new methods of control. Thus, out of the recognized interests of society in various fundamental aspects of life come the prohibitions and punishments imposed upon conduct that is believed to be inimical to those interests. These acts we call crimes. Criminal conduct for this reason shades from the well recognized and anciently established to that which has but recently been recognized as contravening social interests. This explanation also enables us to understand why crimes change from age to age and differ from people to people. Whenever society comes to believe that conduct that was once held to menace any of these consciously recognized interests no longer actually menaces them, it ceases to punish. Whenever it believes that a kind of conduct that was once thought to be indifferent to the welfare of the group actually threatens some of these cherished interests, it applies repressive methods, and that conduct becomes criminal. Thus crime is a changing concept, dependent upon the social development of a people, that is, upon the fundamental interests and values dominating their common beliefs.

QUESTIONS AND EXERCISES

1. What is the difference between a legal and a sociological definition of crime?
2. What is the difference between the definition of Garofalo and that of the text?
3. Why can we not define crime as "any act that is socially harmful"?
4. What is the essential sociological difference between vice and crime? between sin and crime?
5. Classify under the categories named in the text the following crimes: (1) fishing out of season; (2) gambling; (3) adultery; (4) desertion of family; (5) assault and battery; (6) manslaughter by running over a man with an automobile; (7) murder for revenge; (8) embezzlement; (9) selling contaminated milk; (10) defamation of character.

Chapter III

THE EXTENT AND COST OF CRIME

How serious is the problem of criminality? Have we any measure of its volume? What are the different kinds of crime of which individuals are guilty? Which of these varieties is the most serious? If we can answer such questions even approximately, we shall be able better to appreciate the struggle which society is making against crime, and to weigh the importance of the problem. Perhaps an attempt to state the problem in statistical terms is worth the effort, even if our figures are not as satisfactory as we could wish.

No country collects accurate statistics as to the number of crimes committed. Fairly good statistics of the arrests in England and Wales are published. Several other European countries also provide an approximation to the total number of arrests for various crimes. In the United States before about 1928 the only statistics on a nation-wide basis were those of commitments to penal and correctional institutions and the population in those institutions on a given date, published about once in ten years. Since then the Bureau of the Census has been publishing figures every year for state and federal institutions only. About 1927 the International Association of Chiefs of Police began to publish uniform crime reports. Their collection and publication have been taken over by the United States Bureau of Investigation. To date, however, these reports cover areas including about half the population of the country. A few states collect statistics for the state as a whole. However, from these various sources we may gather some conception of the extent and cost of criminality, the delinquencies that are most frequent, how they vary with age, sex, occupation, season, nationality, education, and civil condition, how society is reacting to antisocial conduct, whether crime is increasing or decreasing—in short, the criminal physiognomy of present-day society in the United States.

In the United States. While we have no accurate statistics on the number of crimes committed in the whole United States or an accurate record of any particular form of crime, the figures published by the Bureau of the Census and by the Bureau of Investigation at Washington, and certain studies by private persons, give us some approximation to the extent of crime in this country.

Take homicide, for example. The *Uniform Crime Reports* published by the United States Bureau of Investigation are valuable in that they give the number of homicides known to the police. Their reports, however, in 1940 were from only 2,747 cities containing only 70,563,340 people. For the year 1940 there were 6,351 criminal homicides, or 9.8 per 100,000 of the population.¹ Frederick L. Hoffman has given more attention to the subject in the United States than any one else. He estimated in 1925 that there were about 12,000 homicides.²

Unfortunately the Census Bureau has published no figures on commitments per 100,000 of the population to penal and correctional institutions since 1933. Moreover, the situation in 1923 was probably more nearly normal than later when the effects of the depression of the thirties and of the war had time to register in the statistics.

Consider commitments for all forms of crime. On January 1, 1933, 201,433 sentenced men and women were locked up in penal and correctional institutions in this country, or 1 out of 442.5 persons fifteen years old and over in the general population. This is no adequate measure of the amount of criminality, since many of the criminals escape arrest and conviction.³ The figure given does not take into account those who are arraigned in court and are acquitted, discharged, given suspended sentences, or put on probation. It ought to be added that 25.5 per cent of these persons were in minor penal institutions such as jails; 74.5 per cent were in what may be called the "higher institutions of crime."

The *Uniform Crime Reports* of the United States Bureau of Investi-

ESTIMATED NUMBER OF MAJOR CRIMES IN THE UNITED STATES, 1939-1940

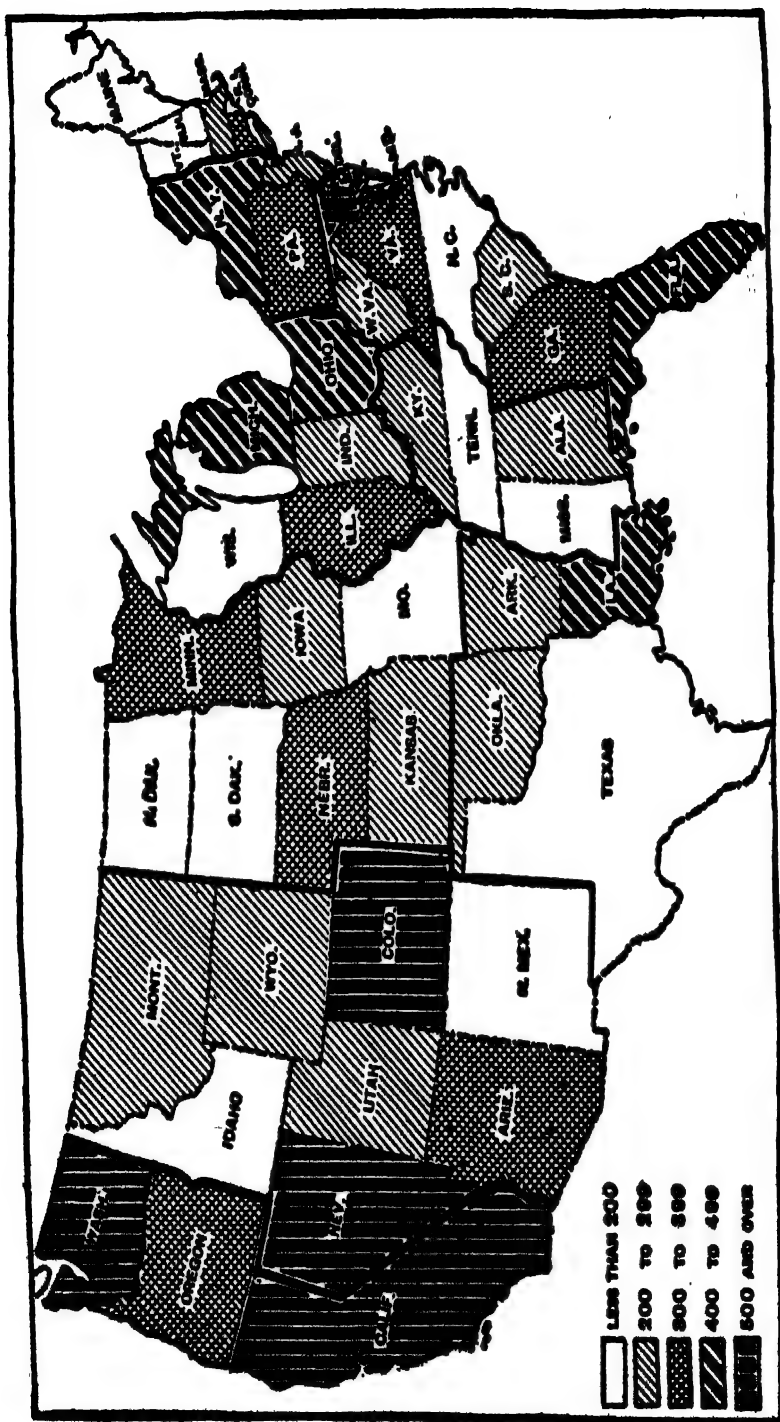
Offense	Number of Offenses		Change	
	1939	1940	Number	Per Cent
Murder and non-negligent manslaughter	7,514	7,540	+26	+0.3
Manslaughter by negligence ..	4,394	4,425	+31	+7
Rape	8,832	9,055	+223	+2.5
Robbery	55,242	53,435	-1,807	-3.3
Aggravated assault	46,483	46,538	+55	+1
Burglary	311,104	316,369	+5,265	+1.7
Larceny	872,988	902,113	+29,125	+3.3
Auto theft	177,997	177,551	-446	-.3
Total	1,484,554	1,517,026	+32,472	+2.2

¹ *Uniform Crime Reports*, Vol. XI, No. 4. *Fourth Quarterly Bulletin, 1940* (Washington, D. C., 1941), pp. 160, 203.

² Hoffman, *The Homicide Problem* (Newark, N. J., 1925), pp. 3, 94.

See also Brearly, *Homicide in the United States* (Chapel Hill, N. C., 1932), Ch. II.

³ Prisoners in Jails and Other Penal Institutions Under County or Municipal Jurisdiction, 1933, Bureau of the Census (Washington, D. C., 1935), p. 3 (latest available figures on jails); Sellin, "Crime," *American Journal of Sociology*, May, 1942, p. 898.



gation estimated that in 1940 there were committed 1,517,026 major crimes. This estimate was based on the reports of police departments of cities with a total population of more than 65 million. These major crimes did not include such crimes of a serious nature as embezzlement, fraud, forgery, counterfeiting, arson, receiving stolen property, drug violations, carrying concealed weapons, and so on. The table on p. 23 shows the distribution by offense of the totals for 1939 and 1940.

The fingerprints sent by police departments and sheriffs to the United States Bureau of Investigation, while incomplete because not all peace officers report to the Bureau, provide information of value. In 1940 fingerprints on 609,013 arrests were sent to the FBI. Thirty-nine per cent of them represented what the bureau calls major crimes and were distributed as follows according to offense: ⁴

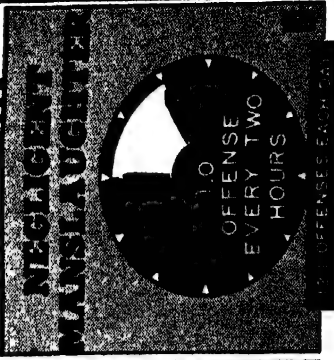
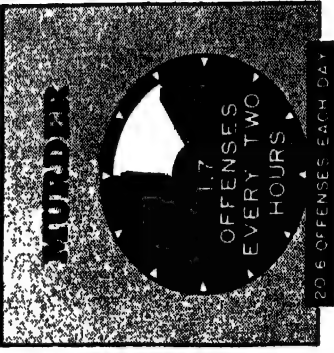
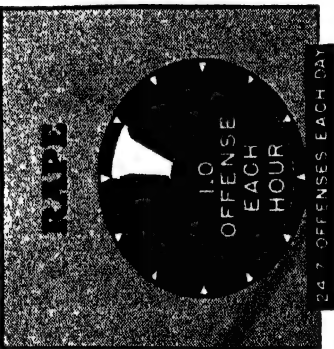
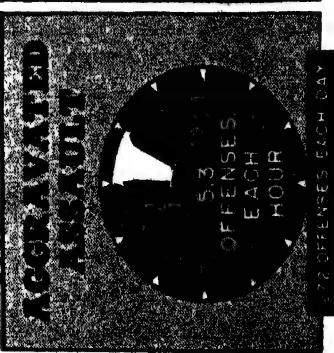
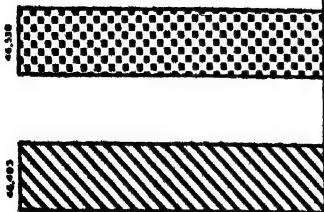
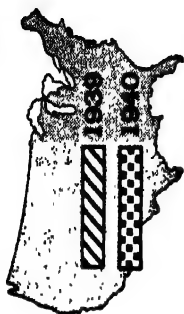
Criminal homicide	6,351
Robbery	13,251
Assault	34,018
Burglary	34,829
Larceny (except auto theft)	62,440
Auto theft	13,364
Embezzlement and fraud	19,132
Stolen property (receiving, etc.)	3,577
Arson	1,081
Forgery and counterfeiting	7,105
Rape	6,031
Narcotic drug laws	5,014
Weapons (carrying, etc.)	5,684
Driving while intoxicated	28,803
Total	240,680

In England and Wales. In England and Wales recently we have reports only on the number of individuals convicted and received in the various prisons. There are no figures on the number of offenses committed. In 1938, the last figures available before the outbreak of the war, only 32,225—28,703 men and 3,522 women—were committed to the penal and correctional institutions of England and Wales. Of the total number, 15,145 were committed for indictable offenses (larceny, burglary, house-breaking, false pretences, fraud, sex offenses, murder, manslaughter, wounding, receiving, bigamy, forgery and coining, etc.), 4,452 for non-indictable offenses akin to indictable (assaults, malicious damage, indecent exposure, cruelty to children, and so on), and 12,828 for other non-indictable offenses (drunkenness, offenses against the Poor Law, begging and sleeping out, breach of police regulations, offenses against railways, and so forth). In addition 8,322 individuals were convicted but were dealt with by other methods than by imprisonment (binding over,

⁴ *Uniform Crime Reports*, Vol. XI, No. 4, p. 203; A valuable critique of the present chaos of criminal statistics in the United States is No. 3, *Report on Criminal Statistics*, National Commission on Law Observance and Enforcement (Washington, D. C., April, 1931), pp. 19-205; the *Survey of Criminal Statistics in the United States* by Warner, National Commission on Law Observance and Enforcement, No. 3, *op. cit.*

ESTIMATED NUMBER OF MAJOR CRIMES IN THE UNITED STATES

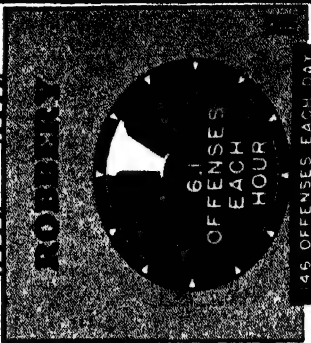
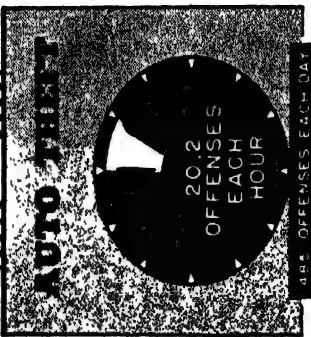
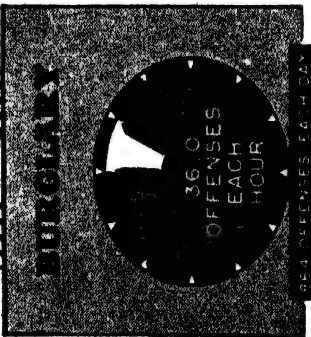
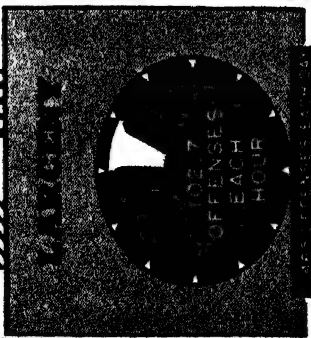
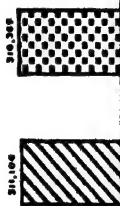
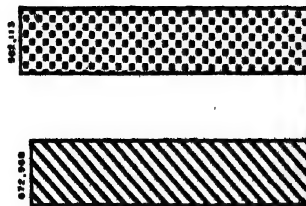
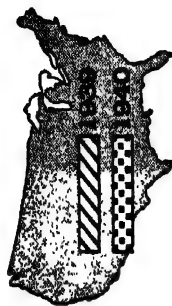
Offenses Against The Person



Reproduced from *Uniform Crime Reports*, Vol. XI, No. 4, *Fourth Quarterly Report, 1940*, Federal Bureau of Investigation (Washington, D. C., 1941), p. 202.

ESTIMATED NUMBER OF MAJOR CRIMES IN THE UNITED STATES

Offenses Against Property



Reproduced from *Uniform Crime Reports*, Vol. XI, No. 4, *Fourth Quarterly Bulletin, 1940*, Federal Bureau of Investigation (Washington, D. C., 1941), p. 203.

fine, probation, and the like). The total of persons convicted of crimes in England and Wales in 1938 was thus 40,557.⁵ These figures show a decline from the numbers committed during the early years of the century, and less than any year in the 1930's except 1937. Compared with the figures for the United States they are very low.

In Germany. In Germany during 1929 there were 593,707 convictions exclusive of those convictions for offenses against military law. That number gives a rate of 1,190.53 per 100,000 persons of punishable age in the total population. The rate for all males was 2,146, and for females it was 314, while for juveniles the rate was 517. In each case the rate is based upon 100,000 persons in a given category—males, females, or juveniles. Out of the total number convicted, 593,707, a total of 211,755 had been convicted before, while 61,449 had been convicted more than four times before.⁶ The situation under Hitler we do not know.

In order that one may see what had happened in twenty years in Germany before World War I, the number of people tried for crimes or offenses in 1909 may be compared with the number tried in 1929. In the former year there were 797,112 persons tried; in the latter, 706,857. In 1909 there were 248,648 thefts, frauds, and embezzlements; in 1929 there were 255,613 crimes and offenses against property.⁷

The Excessive Criminality of the United States. All the figures obtainable show that the United States has an unenviable preëminence in the matter of criminality. If we compare the cities of the United States with the cities of Great Britain and with the cities of the Continent, the rate of criminality before World War I was very much higher than in the United States. In 1919 Chicago had 110, Great Britain 9, and Canada 13 murders to a million of the respective populations, according to the Chicago Crime Commission.⁸ Comparing cities of about the same size at that time, Fosdick found that Glasgow had 38 homicides during the period 1916-1918, while Philadelphia had 281. In 1915 St. Louis had eleven times the number of homicides of Liverpool, and in 1916 eight times the number.

Much of the same situation existed in the other cities of the United States. In 1916 New York had six times the number of homicides (murders and manslaughters) of London for the same year, and only ten

⁵ *Report of the Commissioners of Prisons and the Directors of Convict Prisons for the Year 1938*, Cmd. 6137, His Majesty's Stationery Office (London, 1939), pp. 11, 12, 100-102.

⁶ *Kriminalstatistik für das Jahr 1929*, Statistik des Deutschen Reich, Band 398, s. 6.

⁷ Aschaffenburg, *Crime and Its Repression* (Boston, 1913), pp. 223-225.

⁸ Chamberlain, *Journal of Criminal Law and Criminology*, Vol. XI, No. 22 (May, 1920). The greater proportion of arrests are for minor crimes. For example, in Chicago from 1910 to 1921, arrests for felonies constituted only from 10.2 per cent to 16.2 per cent of all arrests. Abbott, *Journal of Criminal Law and Criminology*, Vol. XIII, No. 331 (Nov., 1922). Abbott has also called attention to the fact that the Crime Commission's figures are much higher than those of the Police Department (330 as compared with 154) and that the Commission in its report gives no source for its figures. *Ibid.*, p. 352.

less than all of England and Wales. Los Angeles, one-twentieth the size of London, had two more homicides in 1916 than London, while in 1917 she had ten more. Cleveland, Ohio, one-tenth the size of London, in 1917 had three times the number of homicides of London, twice the number in 1918, and six times the number in 1920. For every robbery or assault with intent to rob in 1920 in London, there were seventeen such crimes committed in Cleveland. Cleveland had as many murders during the first three months of 1921 as London had during all of 1920. Liverpool, then about one and one-half times as large as Cleveland, in 1919 had only one robbery for thirty-one in Cleveland, and only one murder and manslaughter as compared with Cleveland's three. Every year in Cleveland there were more robberies and assaults to rob than in all England, Scotland, and Wales put together, and when compared with other American cities, Cleveland's record does not appear to any special disadvantage. During 1921 St. Louis had 481 robberies, while Cleveland had 272. During the same period St. Louis had nearly twice the number of complaints of burglary and housebreaking.⁹ As noted above, according to the Chicago Crime Commission, Chicago had 330 murders in 1919, 110 to the million population, while Great Britain had only nine to each million of its population, and Canada but thirteen. No later figures are available for such a comparison. Possible causes for this greater criminality in the United States will be considered in our next chapter.

Such an outline of the extent of crime, inadequate though it be, indicates the seriousness of the problem faced by three great nations. And to this portrayal must be added those acts that have all the marks of crime characteristic of many types of modern business and by some of the professions. Some of these acts are what Sutherland has called "white-collar" crimes, while others are just on the margin between crime as we have defined it (p. 9) and socially approved behavior.¹⁰ These are tolerated but not "honest." A segment of society believes such conduct injurious to the general welfare, but it does not have, or has not exercised, power to ban them with positive penalties. It may do so to-morrow.

THE COST OF CRIME

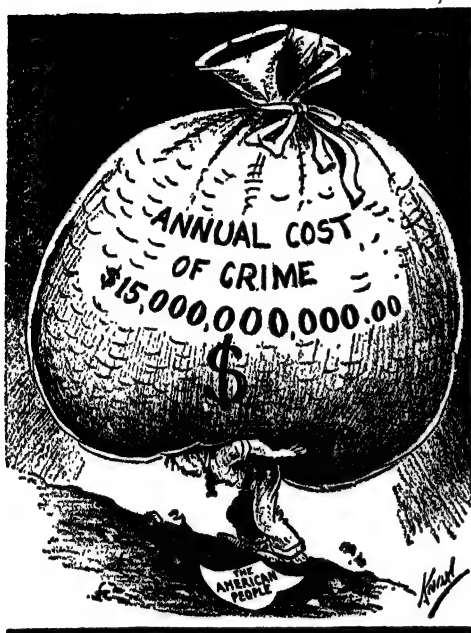
We are even more at sea with respect to the money cost of crime. Only some general statements can be made. But there is no question that society's attempt to repress crime and to catch, try, and guard the criminals is a financial burden to the taxpayers of every country far beyond what most people imagine.

In the United States. Unfortunately we have no recent figures on the cost of crime. In 1910 Warren F. Spalding, Secretary of the Massachusetts Prison Association, estimated that the detection, conviction, and

⁹ Fosdick, *American Police Systems* (New York, 1920), pp. 10-17; Fosdick in *Criminal Justice in Cleveland* (Cleveland, Ohio), 1922, pp. 3, 4.

¹⁰ Sutherland, "White-Collar Criminality," *American Sociological Review*, Feb., 1940, pp. 1-12.

punishment of crime required more than one-tenth of all the money raised by taxation for all purposes. The single expenditure in the state of Massachusetts equalling that for crime was that for education.¹¹ Some



conception of the enormous burden crime entails upon the taxpayer, to say nothing of the victims of criminal activities, may be gained from some recent estimates by the National Commission on Law Observance and Enforcement. The first table on p. 31, made from figures given in a report of the commission just referred to, which its authors declare to be incomplete, gives us some conception of the economic burden of crime, although an inadequate one.¹²

These figures, the authors of the report believe, give no adequate conception of the total cost of crime. They refused to total these amounts.

There are many more items for which figures cannot be given, such as frauds, organized extortion, racketeering, losses from the lack of productive activity due to crime, arson, embezzlement, burglary, robbery, theft, and private expenditures for protection against criminals, such as burglar alarms and other devices. Further, as the authors of the report just cited point out, these figures apply only to the *immediate*, not to the *ultimate*, cost of crime. They correctly point out that "these two aspects of crime are for the most part mutually exclusive. The ultimate cost of crime, for example, includes losses due to the uneconomic use of the potential productive labor of criminals and law enforcement officers, but does not include transfers of money or other property from injured individuals to persons engaged in criminal activities."

The Employers Association of Chicago has estimated that the cost of rackets in that city alone amounts to \$136,000,000 a year.¹³ Estimates as high as \$18,000,000,000 have been made for the total cost of crime. But it is only a guess. In order that you may see how some of these high estimates are arrived at, consider the second table on p. 31, printed in *The Manufacturers' Record* of March, 1927.

¹¹ *Journal of Criminal Law and Criminology*, Vol. I, May, 1910, pp. 86-102.

¹² National Commission on Law Observance and Enforcement, No. 12, *Report on the Cost of Crime* (Washington, D. C., 1931).

¹³ Guenther, "The High Cost of Hoodlums," *Harpers Magazine*, Oct., 1929.

THE EXTENT AND COST OF CRIME

81

Total federal cost of criminal justice	\$ 52,786,000
(76.8 per cent incurred in connection with enforcement of three federal statutes: the Prohibition law, the anti-narcotic act, and the national motor vehicle theft act)	
State police forces in eleven states	2,660,000
State penal and correctional institutions and parole agencies	51,720,000
Private industrial police in Pennsylvania	1,260,000
Administration of criminal law for approximately 75 per cent of 365 cities of over 25,000 population including 63.5 per cent of the urban population of the country	247,700,000 *
Private protective service in the larger cities (not complete)	10,000,000
Private watchmen (not all for crime protection)	159,000,000
Contributed by private persons and agencies to correctional treatment of delinquents	850,000
Armored cars	5,000,000
Known insured losses against property	47,000,000
Losses due to fraudulent use of the mails	68,000,000
Cost of insurance against burglary, robbery, auto theft, etc.	106,000,000
Safes, chests, vaults, etc. (not entirely on account of crime)	4,227,000
Loss of productive labor of prisoners and law enforcement officers	300,000,000
Bullet-proof glass	311,000
Known incendiarism	2,000,000
Bank burglaries	1,800,000
Thefts from jewelers	2,000,000
Railway freight thefts	1,100,000
Forgeries	40,000,000

* The commission estimates the total cost of criminal justice in the United States as considerably more than \$350,000,000.

AN ESTIMATE OF CRIME COSTS IN THE UNITED STATES *

Losses through frauds	\$ 1,270,000,000
Fraudulent securities	500,000,000
Embezzlements	150,000,000
Forgeries	100,000,000
Worthless checks	120,000,000
Fraudulent bankruptcies	400,000,000
Property losses through burglary, robbery, etc.	1,160,000,000
Transportation thefts	500,000,000
Thefts from warehouses, etc.	525,000,000
Thefts from mails	10,000,000
Economic value of 125,000 murdered persons	125,000,000
Cost of law enforcement	4,000,000,000
Federal, state and municipal police and prison budget	1,000,000,000
Cost of criminal justice and legal expenditure	3,000,000,000
Waste of Crime	6,503,000,000
2,000,000 crimes at \$1500 a year	3,000,000,000
500,000 policemen at \$1500 a year	750,000,000
Commercialized vice	628,000,000
Drug traffic	1,000,000,000
Liquor traffic	1,000,000,000
Economic value of 125,000 victims of liquor traffic	125,000,000
Total	\$12,933,000,000

* Compiled from an address by J. Edgar Hoover before the Third National Convention of Holy Name Societies at New York City, September 19, 1936.

It is clear that such estimates have no valid claim to scientific accuracy. The estimate of \$3,000,000,000 may understate the cost, but it certainly is more conservative and probably nearer the truth than any of the much higher figures, if we include only those activities that come under the definition given in the previous chapter.

However, whatever the exact figure may be, crime entails an enormous social waste. It is one of the most important indices of social, economic, and political pathology. It challenges the serious attention of every individual and organization interested in conserving the resources of the country and in using those resources for the development of the general welfare.

IS CRIME INCREASING OR DECREASING?

For a number of years it has been a very serious question as to whether society is winning in its fight to control criminals. There has been quite a general feeling that crime is increasing in spite of all efforts to control it.

PRISONERS RECEIVED, 1910, 1923, 1926, 1927, 1928, 1929, 1930, 1935

<i>Offenses by Males</i>	<i>Ratio Per 100,000 of General Population of Same Sex</i>							
	1935	1930	1929	1928	1927	1926	1923	1910
All	140.6	105.5	95.3	86.9	81.6	77.5	61.9	55.5
Homicide	8.1	5.5	5.2	4.7	4.3	4.6	5.7	5.4
Rape	3.6	3.1	3.2	3.0	3.1	3.0	2.6	2.3
Robbery	14.7	11.6	9.0	8.2	7.1	6.8	5.1	2.6
Assault	7.6	4.6	4.2	3.9	3.8	3.8	3.2	5.5
Burglary	31.0	20.6	16.8	16.4	14.1	13.5	11.1	12.7
Forgery	8.6	6.8	6.2	6.1	5.6	5.0	4.5	3.4
Larceny and related offenses	32.3	26.2	23.6	23.3	23.2	21.7	14.8	16.3
Sex offenses except rape	3.9	7.8	2.3	2.3	2.2	2.1	2.0	1.7
Violating liquor laws	12.3	12.6	10.8	6.0	6.6	6.1	4.5	0.6
Violating drug laws	3.7	2.5	4.4	3.5	3.1	3.3	3.5	
<i>Offenses by Females *</i>								
All		5.3	5.9	5.7	5.8	5.5	4.3	3.4
Burglary	0.3	0.2	0.2	0.1	0.1	0.1	0.1	0.1
Forgery	0.3	0.3	0.2	0.2	0.2	0.2	0.1	
Violating liquor laws	0.4	0.6	0.7	0.5	0.5	0.5	0.3	

* The other offenses by females show practically no change over these years.

In the United States. For the United States we formerly had no statistics on this point covering a number of years except commitments to institutions. These are of little value to us statistically because recently the Census Bureau changed the base from "ratio per 100,000 of general population of same sex" to "ratio per 100,000 of population fifteen years old and over" by the same sex. That may account for the apparent

increase in almost every category in the foregoing table between 1935 and the previous years.¹⁴ From 1910 to 1930 for males there were increases in commitments for rape, robbery, burglary, forgery, larceny and related offenses, sex offenses except rape, and violating liquor laws. The ratio of commitments for the other offenses changed very little over the two decades.

From such studies as have been made of homicides it is doubtful whether or not they have really increased. The study by Hoffman of homicides in twenty-eight cities seems to show an increase from 5.1 in 1900 to 10.3 in 1924. However, Sutherland, comparing the rates in the area covered by registrations in 1905, found the rate of 2.22 for 1905-1909 had increased only to 2.86 in 1920-1922. Moreover, he found that in 1922 twenty-nine out of sixty-one cities with a population of 100,000 or more in the death registration area had lower homicide rates than in 1912, while twenty-nine had higher rates and three had just the same. In the same year, of twenty-three states that were in the registration area in 1912, one had the same rate, eleven had higher rates, and eleven had lower rates. Thus homicide rates had not appreciably increased in these sixty-one cities and twenty-three states. In addition it must be remembered that in the later years the statistics of homicide were more complete and accurate than in the earlier years because doctors were becoming more familiar with registration practice and therefore were more likely to report homicides accurately. Moreover, the apparent increase of homicide rates in the census mortality figures may be due to the fact that the death registration area has increased by addition of territory in the West and South, where homicide is more frequent than in the older East. Therefore, while it is possible that there has been an increase in criminal homicide in the United States, it cannot with our present knowledge be proved.¹⁵ Further investigation may at some time in the future throw more light on the situation.

In addition to these statistics of commitments to institutions certain other data are at hand: figures on *arrests* in certain states and cities, and on cases coming before the courts. Gehlke and Sutherland have demonstrated that arrests aside from those for drunkenness and traffic violations show "in general a gradual rise from 1900 to 1925, broken by the downward dip of two of the curves in the period 1917 to 1920. The sharper rise after 1920 merely recovers the lost ground of the decline. After 1925 two of the curves tend to flatten out. Contrary to general belief, there is no

evidence here of a 'crime' wave, but only of a slowly rising level."¹⁶ Even homicide, robbery, and burglary, the holy trinity of the sensational journalists' attention, behaved much the same as all other crimes.

Cases prosecuted in the federal and certain higher state courts likewise, omitting auto offenses, drunkenness, and offenses against the Prohibition law, show a similar tendency gradually to increase from 1900 to 1930 with a flattening out of the curve in the later years.

The cases tried in the lower courts, largely misdemeanors, when the less serious cases are disregarded, show less of an increase than those tried in the higher courts, still less evidence of a "crime wave."¹⁷

The United States Bureau of Investigation (FBI) published the estimated number of crimes in 1940 in 2,747 cities and villages, from 1,609 sheriffs and state police organizations and from thirteen agencies in territories and possessions of the United States. The 2,747 cities represented a population of 70,563,340, somewhat more than half of the total population of the country. The Bureau estimated that during the previous five years the reports showed increases in rape, aggravated assaults, and larcenies, but substantial decreases in criminal homicide, robbery, burglary, and auto theft.¹⁸

War affects the crime rate. *Uniform Crime Reports* showed that of crimes known to the police of 318 cities with a total population of over 45,000,000 there was an increase in the offenses against the person (murder, rape, negligent manslaughter, and aggravated assault) and a decrease of the offenses against property (robbery, burglary, larceny and auto theft) in 1942, the first year of war, compared with the average during 1939-1941. It must be remembered, however, that these figures are not based upon the number per 100,000 of population.¹⁹ The FBI suggests that the increase of crimes against the person was due to the tendency of crimes of passion to increase during a war period because of a partial breakdown in normal restraints and inhibitions. Later it will be shown that the increase was largely due to the growth of the number of crimes by women.

New York State, which perhaps has the most complete and accurate reports on crime known to the police, reported that 1936 compared with 1935 showed a decrease in major crimes of 8.9 per cent. This decrease had been continuous in that state from 1931, except for 1934.²⁰

On the whole, then, the picture of the crime flux in the United States from 1900 to 1930 was that of a slight increase in the older and more

¹⁶ Gehlke and Sutherland, *Recent Social Trends* (New York, 1933), Vol. II, pp. 1127, 1128.

¹⁷ *Ibid.*, pp. 1129-1133.

¹⁸ *Uniform Crime Reports*, Vol. XI, No. 4, p. 153. But the crimes reported to police in 219 cities of more than 25,000 inhabitants in the United States, 1939-1940, showed increases in all major crimes except robbery and auto theft (p. 170).

¹⁹ *Ibid.*, Vol. XIII, No. 2, pp. 54-57.

²⁰ *Correction*, New York State Department of Correction (Albany, March, 1937), pp. 4-5.

serious offenses, a slighter increase with a tendency toward stability of the older minor offenses, and a great increase of the newer crimes whether considered serious or of minor importance. The new crimes, such as "racketeering," violation of the Volstead Act, and the older but recently more widely employed kidnapping and bombing during this period attracted wide attention. "Racketeering" is not new but became better organized and more widespread than formerly. A form of levying tribute ostensibly for protection against competitors but often against the protected, it had enormous growth for a few years, accompanied by bombing or other violent means of enforcement of demands. Likewise kidnapping, although an old crime, increased as a means of extortion, until it was virtually stamped out by the FBI. Violation of the liquor laws increased tremendously under the Volstead Act and the serious attempt to enforce it. ("Without law there is no crime.") Moreover, the passage of the Dyer Act making the transportation of a stolen automobile across state lines a federal offense created a new legal crime which, of course, then first appeared in the statistics and with the growth in the number of motor-cars showed an increase. The widespread use of the auto also made easier the work of the robber, the burglar, the kidnapper, the bootlegger, the hijacker, and the gangster. The results appeared in the statistics of crime committed by all these criminals. The economic depression brought to light a great crop of embezzlers and fraudulent persons. For a time some of our prisons had growing banker's colonies. But, as shown above, economic crimes diminished as the effects of the depression were cushioned, probably by Social Security, and possibly by economic recovery.

In Germany. Aschaffenburg, writing of the situation in Germany shortly before World War I, was of the opinion, based upon a careful study of the German statistics, that serious crime there was on the increase.²¹ The war and its aftermath disturbed the whole trend of events in Germany. Except for a brief period the industrial and commercial situation in Germany had been very bad. What had happened in respect to crime?

During my visit to the penal and correctional institutions of the four largest states in Germany in the summer of 1932 I was impressed by the lack of overcrowding there in contrast to the situation in most such institutions in the United States. The authorities said that while there had been some increase in the institutional population, it had not been great. Several of them explained the striking and unexpected situation on the theory that the "dole" had eased somewhat the otherwise pressing economic needs of the people, and that the organization of the young men in the Steel Helmet and Brown Shirt (Hitlerite) organizations had absorbed their attention and energies in the interest of Germany's welfare—a kind of patriotic psychology.

As in most of the warring countries, criminal statistics in Germany

²¹ Aschaffenburg, *op. cit.*, pp. 215-216, 223.

showed a great decline during World War I. They reached their low point in 1916. They rose decidedly in 1918, and gained the astonishing height in 1923 of 823,902 convictions. Apparently this high number was the reflection of a very great increase in thefts, owing to the depressed economic conditions among the German people. With more settled conditions the rate per 100,000 persons of punishable age in the population fell from 633 in 1923 to 145 in 1928 for simple theft. Criminality as a whole from 1923 to 1930 there has shown a decrease from 1,693 per 100,000 of the population of punishable age to 1,190 in 1930. This apparent decrease, however, Dr. von Hentig says is an "optical illusion," for while both simple theft and graver theft have decreased from 1920 to 1930, fraud has more than doubled per 100,000 of the population of punishable age. Robbery and extortion slowly decreased from 1921 to 1928 but increased again in 1929 and 1930. Incendiarism between 1919 and 1930 increased over fivefold. A similar tendency to increase was manifested by embezzlement and receiving stolen goods. On the whole it appeared to this German scholar that the outlook for the decrease of serious criminality in Germany was not hopeful in 1933.²²

In England and Wales. From the standpoint of crime the government of England and Wales formerly was in the happy situation that she furnished more than one index of the volume of crime: the rate of commitment to institutions, records of arrests, and the reports of crimes committed.

Were we to depend upon the statistics of the population of the various penal and correctional institutions in England we should inevitably decide that crime has decreased in that country. The following table is in point:

DAILY AVERAGE POPULATION OF INSTITUTIONS FOR CRIMINALS

	1911-12	1928	1938
Local prisons	15,907	8,128	....
Borstal institutions	730	1,347	....
Convict prisons	3,082	1,491	....
Preventive detention	1	143	....
Total	19,720	11,109	10,338 *

* Report of the Commissioners of Prisons and the Directors of Convict Prisons for the Year 1938, Cmd. 6137, His Majesty's Stationery Office (London, 1939), p. 16.

Thus in about a quarter of a century the daily average of prisoners in the various institutions was almost cut in half in spite of the growth of population. The explanation of the English census authorities is that this decrease, in spite of the growth of population, was due to the growing

²² Von Hentig, "Sturmwarnung," *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, 24. Jahrgang, 1. Heft (Januar, 1933), pp. 1-5. For the figures for 1928 and 1929, see *Kriminalstatistik für das Jahr 1929*, Bearbeitet im Reichsjustizministerium und im Statistischen Reichsamt (Berlin, 1932), p. 7.

use of probation, to the instalment payment of fines and to the imposition of shorter sentences during recent years.²³

The criminal statistics of England and Wales before 1930, however, provided us the number of offenses committed in that Kingdom and gave us quite a different picture. Indictable offenses in England include the more serious forms of crime. In 1882 the rate of indictable offenses known to the police was 380.7 per 100,000. From that year to 1889, the first year of the Boer War, there was a gradual fall to 239.3 per 100,000. This was the greatest decrease known in the criminal statistics of England. After the Boer War there was a gradual rise, which culminated in 1908 with an incidence of 297.8 per 100,000. Then there was a fall to 269.5 in 1910 to 1914. During World War I, 1915-1919, there was a further decline to 251 per 100,000. After the war the average incidence from 1920 to 1924 inclusive was 279.9. In 1925, it rose to 283.1 and in 1926, the year of the general strike, to 341.6. It fell in 1927 to 319.9 and rose in 1928 to 330.4, in 1929 to 339.8, and in 1930 to 369.4. The report indicates that the greater part of the increase was due to an increase in number of recorded crimes against property in 1930.²⁴ It is apparent, therefore, that in spite of the decrease in criminal population in institutions there has been some increase in offenses since World War I.

PROPORTION OF EACH CLASS OF CRIME

What part does each of the various classes of crime play in the total of criminality?

In England and Wales. In 1930 in England and Wales the total number of indictable offenses known to the police was 147,031. The total number of persons dealt with for non-indictable offenses was 609,670. Of these non-indictable offenses 23,881 were of a criminal character. If we divide the total of indictable and non-indictable offenses into criminal and non-criminal, 22.6 per cent of the offenses in 1930 in England and Wales were criminal, while 77.8 per cent were non-criminal. We must remember that in England and Wales criminal and non-criminal offenses are legal classifications.²⁵

There is no information in the English statistics at the present time indicating the percentage of the various types of crime. About 1922 in England crimes against the person constituted practically 8 per cent, those against property 18.5 per cent, and other offenses 73.5 per cent. Of the last, about nine-tenths of the offenses against the person are non-indictable assaults often occasioned by drink.²⁶

In Canada. Since 1900 in Canada there has been a great increase in

²³ *Criminal Statistics, England and Wales, 1928*, Cmd. 3581, Introductory Note, p. lvi.

²⁴ "The Offender and the Community before the War and Since," *Criminal Statistics, England and Wales, 1928*, Parliamentary Papers, Vol. 30. Session 1929-1930; *Criminal Statistics, England and Wales, 1930*, Cmd. 4036, p. vi.

²⁵ *Criminal Statistics, England and Wales, 1930* (London, 1932), pp. vii, xv.

²⁶ Hobhouse and Brockway, *English Prisons Today* (London, 1922).

convictions for criminal offenses, rising from 188 on the basis of 100,000 population in 1900 to 410 in 1930. The increase was not regular, showing a decline in 1915 during the war, with a low point in 1917. There has been a decided upward trend since 1926. Total criminal convictions rose from 41,654 in 1900 to 345,641 in 1930.

On the other hand, for the last three years of this period the trend has shown that the criminal offenses have constituted less and less of the total number of offenses—in 1900 24 per cent of all convictions, while minor offenses constituted 76 per cent. In 1930 criminal offenses constituted only 11.8 per cent of all convictions, and minor offenses accounted for 88.2 per cent.²⁷

In the United States. In 1940 of crimes known to the police in 2,001 cities with a total population of 65,128,946, crimes against property constituted 95.9 per cent and those against the person (murders, man-slaughters, rapes, and other felonious assaults) 4.1 per cent.²⁸

RECIDIVISM

One of the most serious problems is that of the criminal repeater. It is serious not only because it reflects upon our methods of treating the delinquent but also because it raises the important question of why individuals who have fallen into crime and have suffered punishment are not thereby deterred from a repetition of the offense, and thus it leads us into the problem of causes.

It is difficult to ascertain the extent of recidivism chiefly because of our inefficient methods of identification and of recording facts about criminals. A man may change his name or may go from one state to another. We have made only a beginning in providing the means whereby when he is arrested we can ascertain whether or not he is a repeater. Not all penal and correctional institutions send fingerprints to Washington. Many police departments and sheriffs do not seek the aid of the FBI (Federal Bureau of Investigation) in the Department of Justice at Washington to learn whether the arrested person has a history of previous conviction on record there.

The *Uniform Crime Reports* perhaps give us the best information on this subject available in the United States. Of those whose fingerprints (585,988) were sent by the police to the FBI in 1942, 49.1 per cent already had fingerprints indicating previous arrest on file in that Bureau. Of the total number arrested in 1940 (609,013) 33.9 per cent had been previously convicted.²⁹

The Bureau of the Census provides some information on recidivism. In 1939 of prisoners released from state and federal prisons and reforma-

²⁷ "Judicial and Penitentiary Statistics," *The Canada Year Book* (Ottawa, 1932), pp. 900, 901.

²⁸ *Uniform Crime Reports*, Vol. XI, No. 4, p. 160.

²⁹ *Ibid.*, Vol. XI, No. 4, pp. 213, 214; *ibid.*, Vol. XIII, No. 2 (1942), p. 92.

tories to the total number of 60,751, information was obtained as to previous commitment on 57,612. Of this group 49.7 per cent were first offenders, while 50.3 per cent had previously been committed to jails, juvenile institutions, or prisons.³⁰

The Gluecks' study of 510 paroles from the Massachusetts Reformatory, 1911-1922, showed that 80 per cent were not reformed five to fifteen years later. Of 500 women discharged from the Massachusetts Reformatory for Women, the Gluecks found that 76.4 per cent were recidivists for part or all of the five-year post-parole period.³¹

Every study of prisoners shows a high percentage of recidivism. A former head of Scotland Yard in London some time ago wrote that nine-tenths of the serious crimes of that city were committed by repeaters and that if they could be eliminated serious crimes would be appreciably reduced.³²

Formerly it was thought that recidivism was linked with abnormal mental and personality conditions.³³ Goring thought he discovered among the English convicts he studied that "with increasing degrees of recidivism there is a small but nevertheless regular regression in the mean intelligence of convicts."³⁴ More recent studies of the problem have given diverse results as to the relation between intelligence and violation of parole or between intelligence and recidivism.³⁵ Sutherland reports that a study of 1,288 inmates of thirty-four county jails and penitentiaries in New York in 1925 showed a higher percentage of mental deficiency among those arrested twice or oftener than among those who had been arrested but once, and that in Rhode Island a higher proportion of defectives was found among recidivists than among first offenders in the state prison, the industrial school, and the county jail but a lower proportion in the house of correction. On the other hand, Fernald, Hayes, and Dawley found no significant relationship between intelligence and recidivism among the women in the Bedford, N. Y., reformatory.³⁶ In our study of failures on parole, probation and after release by executive clemency in Wisconsin, we found that the Intelli-

³⁰ *Prisoners in State and Federal Prisons and Reformatories: 1939*, Bureau of the Census (Washington, D. C., 1937), pp. 79, 80.

³¹ Glueck and Glueck, *500 Criminal Careers* (New York, 1930), p. 190, *Five Hundred Delinquent Women* (New York, 1934), p. 242.

³² Cited by Hopkins, "Criminals and the Law," *Journal of Criminal Law and Criminology*, Vol. II, No. 69 (May, 1911).

³³ Ordahl, "A Study of Thirty-three Male Convicts," *Journal of Delinquency*, Vol. I, No. 13 (Mar., 1916).

³⁴ *The English Convict* (London, 1913), p. 271.

³⁵ G. B. Vold, *Prediction Methods and Parole* (Hanover, N. H., 1931), p. 33.

³⁶ "Report of the Committee on Psychopathic Delinquents," *Report of the Commissioner of Prisons of New York* (Albany, 1925). See also *Rhode Island Mental Hygiene Survey*; Glueck and Glueck, *Later Criminal Careers* (New York, 1937), p. 201; Fernald, Hayes, and Dawley, *A Study of Women Delinquents in New York State* (New York, 1920), p. 468 ff.; Sutherland, "Mental Deficiency and Crime," in Young, *Social Attitudes* (New York, 1931), Ch. XV.

gence Quotient (I.Q.) had no significant statistical relationship to success or failure.³⁷ The Gluecks in their follow-up study of five hundred criminal men found that only 15.2 per cent of those who had reformed, but 89.9 per cent of those who continued to be delinquent or criminal, were burdened with some psychiatric condition.

The seriousness of recidivism is manifest from these figures. Since available statistics on inmates of penal and correctional institutions and of arrests in the United States show that about one-half have been in trouble before, it is important (1) that every measure possible be taken to prevent conduct that will lead to arrest and conviction for crime; (2) that when an individual is arrested and convicted he should be subjected to such treatment as will tend to readjust him to the conditions that society has established for its welfare.

The situation this brief survey presents is not pleasant to contemplate. The extent of crime, as indicated above, is serious. It is a disconcerting fact that certain crimes seem to be increasing and that new forms of crime baffle for the time being the efforts of society to control them. Serious, also, is the number of homicides in the United States, and of the very greatest significance is the large proportion of those who were committed to our correctional institutions who have been committed before. Recidivism is as serious a challenge as the large number of offenders. Perhaps the part of the picture which stands out most vividly is the enormous cost in money that crime entails upon a society. It appears that we spend more on our struggle with criminals than on any other one thing except education and good roads. By an irony of fate good roads and science furnish the criminals with their most approved means of committing crime and escaping.

QUESTIONS AND EXERCISES

1. What is a crime rate? What is a homicide rate?
2. Explain the high rate of criminality of the United States.
3. Explain the apparent decrease of crime in Great Britain.
4. Are the criminal statistics at present available a fair index of the amount of crime in the country? Why?
5. Compare the amount of money spent on account of crime with that spent upon such constructive services as education and health.
6. What would be a discriminating reply to a statement that crime is increasing in the United States? in England? in Germany?
7. Point out the offenses that according to the census statistics have increased from 1910 to 1930. Those that have decreased.
8. Is there any truth in the newspaper contention that there has been a crime wave in the United States? Explain what has happened.
9. Discuss the proposition that the division of crimes into more serious and less serious is a sociological phenomenon growing out of the beliefs of the group.

³⁷ Unpublished ms., *The Treatment of the Wisconsin Prisoner*, by Gillin and associates.

10. Why is recidivism a serious sociological matter? Discuss the proposition that recidivism reveals the inadequacy of our methods of treating the convicted criminal; that recidivism is a product of our whole social and economic organization, not simply of the treatment of the convicted offender.
11. What does the evidence show as to the connection between the level of intelligence and recidivism?

Chapter IV

THE PHYSIOGNOMY OF CRIME

We speak of a man's physiognomy. By that term we mean his general appearance. We apply the term more widely to describe the general appearance or fashion of a landscape, a homestead, or a people. If we attempted to describe the physiognomy of a campus, we should point out the general features—the lay of the land, whether hilly or level, the trees and the grassy spaces, the buildings and their distribution, and so on. We do not pretend to reveal causes by describing the physiognomy of anything, although such a description may provide the foundation for a study of causation. By the physiognomy of crime, then, we mean a general picture of criminality at a given time and within a given country.

In the United States, the most accurate available information is to be found in the *Uniform Crime Reports* published by the Bureau of Investigation of the United States Department of Justice. This information, however, relates only to crimes known to the police of 2,001 cities with a total population of 65,128,946, and to 1,138 sheriffs, 10 state police organizations, and 120 village officers in 1940.¹ Inadequate as it is in coverage, this information is probably the best we have as to the incidence of crime. It is probably more accurate as a picture of urban than of rural crime.

Geographic Distribution. The accompanying maps show the geographic distribution of five important crimes known to the police of 2,001 cities of the United States in 1940. (See pp. 44-45.)

Inspection of these maps reveals that there is wide variation in the incidence of these crimes between different sections of the country. The ratio of murder to each 100,000 of the population varies from 1.2 in the New England division to 21.6 in the East South Central; for aggravated assaults, from 10.5 in New England to 210.7 in the East South Central. Likewise the three crimes against property show great diversity of distribution. Robbery varies from 15.5 for each 100,000 population in New England to 85.6 in the East South Central and to 81.6 in the East North Central. Burglary has an incidence of 522.8 in the Pacific Division and 519.2 in the East South Central, while it has one of only 259 in the

¹ In this chapter we shall use for the most part statistics for 1940 in order to show as accurately as possible the ratio of criminality to population as given in the 1940 census.

Middle Atlantic. Auto theft has a ratio of 140.2 in the West North Central, but one of 372.5 in the Mountain division.

These variations cannot be explained without very much more knowledge than we have at present. Possibly an analysis of the age groups in the population of each geographic division would throw some light on the variability, since the late adolescent and early adult ages are marked by a high crime rate. But further analysis would be necessary. Why do the South Atlantic and the East South Central rank so high in all the five crimes except auto theft? Is it the presence of the Negro in those regions?² How does auto theft vary with the number of automobiles for each 100,000 of population? What variations exist as to accuracy of reporting crimes by the police?

That was the situation in cities. What are the facts in regard to rural crimes?

Urban and Rural Criminality. How does the city compare with the country in criminality? There is current a belief that "God made the country, man made the city, and the Devil made the little country town." Does this adage represent the situation correctly as registered in the crime rates?

We have only two sources of information on this matter: (a) statistics of commitments as published by the Bureau of Census, and (b) the *Uniform Crime Reports*, which give some information on the relative frequency of certain crimes in urban and rural communities. The Census Bureau has not included such information in its reports since 1923. The *Uniform Crime Reports* on rural crime are based on reports sent by 1,609 sheriffs and state police organizations. The FBI has published only a "comparison of average groups of one hundred urban crimes and one hundred rural crimes."

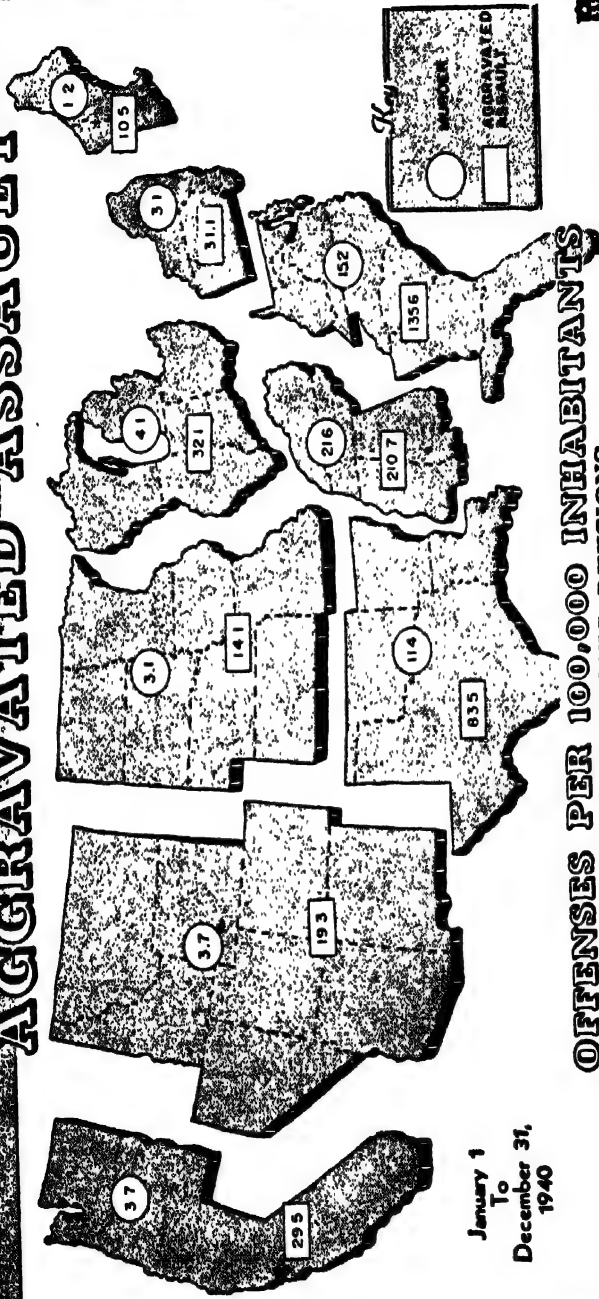
COMPARISON OF AVERAGE GROUPS OF 100 URBAN CRIMES AND 100 RURAL CRIMES *

Offense	Per Cent	
	Urban	Rural
Total	100.0	100.0
Larceny	59.1	48.4
Burglary	22.3	28.7
Auto theft	11.1	9.7
Robbery	3.4	3.3
Aggravated assault	2.9	5.6
Rape .....	.6	2.3
Murder .....	.3	1.1
Manslaughter .....	.3	.9

* *Uniform Crime Reports*, Vol. XI, No. 4, *Fourth Quarterly Bulletin*, 1940 (Washington, D. C., 1941), p. 186.

² For a discussion of probable causes see Chapters X-XIII of this book. For a revealing study of murder in Richmond, Va., see Kilpatrick, "Murder in the Deep South," *Survey Graphic*, Oct., 1943, p. 395.

MURDER and AGGRAVATED ASSAULT



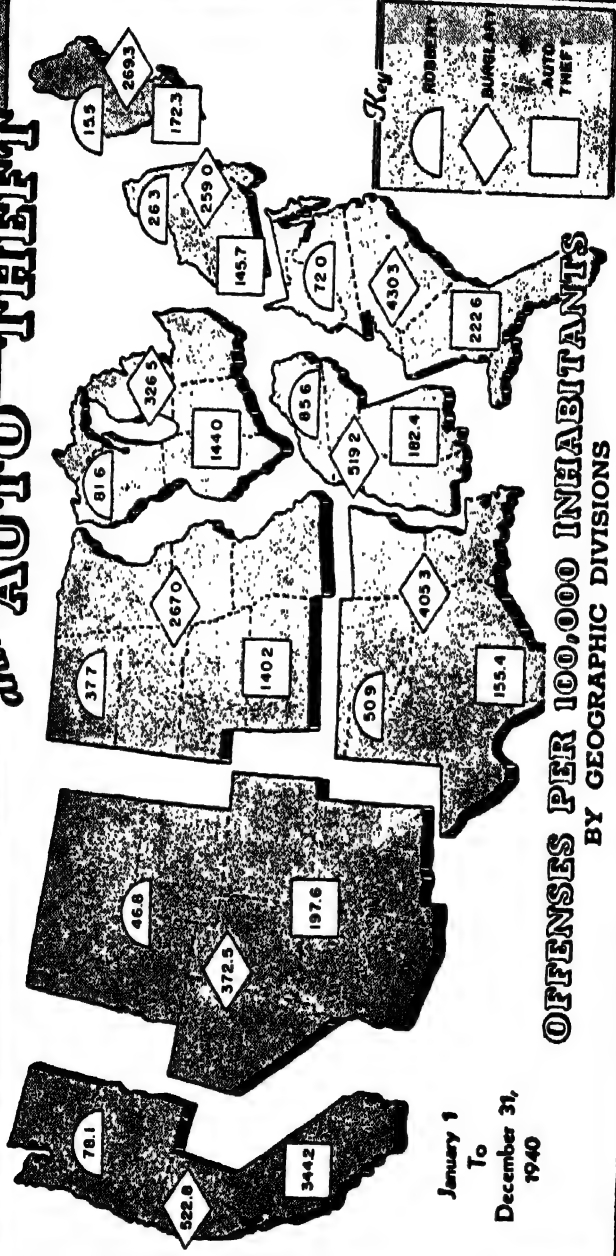
January 1
To
December 31,
1940

OFFENSES PER 100,000 INHABITANTS
BY GEOGRAPHIC DIVISIONS

Reproduced from *Uniform Crime Reports*, Vol. XI, No. 4, *Fourth Quarterly Report, 1940*,
Federal Bureau of Investigation (Washington, D. C., 1941), p. 174

ROBBERY, BURGLARY

and AUTO THEFT



January 1
To
December 31,
1940

OFFENSES PER 100,000 INHABITANTS
BY GEOGRAPHIC DIVISIONS

Reproduced from *Uniform Crime Reports*, Vol. XI, No. 4, *Fourth Quarterly Bulletin*, 1940,
Federal Bureau of Investigation (Washington, D. C., 1941), p. 176.

FELONY PRISONERS RECEIVED FROM COURTS, BY SEX AND AGE: 1939 *

	Total		Male		Female		Federal		State	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
Total	62,000		59,432		2,568		11,497		50,503	
Not reported	18		18				3		15	
Total reported	61,982	100.0	59,414	100.0	2,568	100.0	11,494	100.0	50,488	100.0
Under 15 years	31	0.1	30	0.1	1	†	—	—	31	0.1
15 to 17 years	2,573	4.2	2,490	4.2	83	3.2	149	1.3	2,424	4.8
18 years	2,998	4.8	2,896	4.9	102	4.0	236	2.1	2,762	5.5
19 years	3,557	5.7	3,441	5.8	116	4.5	330	2.9	3,227	6.4
20 years	3,310	5.3	3,194	5.4	116	4.5	382	3.3	2,928	5.8
21 to 24 years	12,286	19.8	11,845	19.9	441	17.2	1,686	14.7	10,600	21.0
25 to 29 years	11,839	19.1	11,337	19.1	502	19.5	2,273	19.8	9,566	18.9
30 to 34 years	8,334	13.4	7,986	13.3	408	15.9	1,937	16.8	6,407	12.7
35 to 39 years	6,269	10.1	5,904	9.9	365	14.2	1,545	13.4	4,724	9.4
40 to 44 years	4,103	6.6	3,931	6.6	172	6.7	1,144	10.0	2,959	5.9
45 to 49 years	2,820	4.5	2,685	4.5	135	5.3	797	6.9	2,023	4.0
50 to 54 years	1,821	2.9	1,751	2.9	70	2.7	476	4.1	1,345	2.7
55 to 59 years	1,086	1.7	1,007	1.7	29	1.1	290	2.5	746	1.5
60 to 64 years	529	0.9	515	0.9	14	0.5	134	1.2	395	0.8
65 to 69 years	313	0.5	301	0.5	12	0.5	91	0.8	222	0.4
70 years and over	163	0.3	161	0.3	2	0.1	34	0.3	129	0.3
Median age	27.6		27.6		29.2		31.8	0.3	26.7	

* *Prisoners in State and Federal Prisons and Reformatories: 1939* (release for use of afternoon papers on Dec. 23, 1940), Bureau of the Census (Washington, D. C., 1939), Table 7. The Bureau of the Census published a special report on institutional population in 1943 but it is valueless for the present purpose because it gives the total population no matter when received. See *Population: Special Report on Institutional Population 14 Years Old and Over, 16th Census of the United States, 1940* (Washington, D. C., 1943).

† Less than one-tenth of 1 per cent.

This table is on a different basis from the maps shown above. Those were based on the number of offenses for each 100,000 of the population; the table, on the relative frequency of each type of crime for urban places and rural communities respectively. According to this table a greater proportion of total rural than of urban crimes consisted of offenses against the person—9.9 per cent as compared with 4.1 per cent. Larceny, robbery, and auto theft constituted a greater proportion of urban than of rural crimes, while burglary led in the relative percentage of rural offenses.⁸

The explanation of the greater criminality of the large city is probably to be found in the difference in social conditions between the city and country. The elements of an explanation may be summarized as follows:

1. There is more law-breaking in the city than in the country because there are more laws to break. Moreover, there are more officials charged with the responsibility of seeing that breakers of the law are dealt with by the courts. The same man, therefore, might have an entirely different history in the city and in the country. In the country he might commit the same act as in the city and yet escape observation. Furthermore, the complex relationships of the city life demand that those relationships should be more carefully guarded and regulated than in the country.
2. The contacts in the crowded city are much more frequent and therefore provide irritating situations that lead to personal violence.
3. The pressure of poverty is frequently very much harsher in the city than in the country, and therefore the economic motives to crime probably play a larger part in city populations than in sparsely settled districts.
4. The crowded living conditions in cities, denying common decency in houses, and the incitements to vice, more frequent and also commercialized, intensify the demoralizing effects of contact between people.
5. The crowded city, with the possibility of hiding, draws the more turbulent and criminally inclined elements of the country to itself. Consequently, more criminals of the habitual or professional kind will congregate in the city. Furthermore, it is in the city where those who have been thoroughly demoralized find the excitements and the vice they crave.
6. Because of the economic opportunities offered by the city, its population is composed of a higher percentage of adults than the country population. Since the young adult is in the age of highest criminal incidence, it is natural to expect that the rate of criminality in cities would be greater than in the country.

Age. Crime varies with age. There are two approaches to the study of the distribution of offenders by age: (a) a study of the ratio of commitments to institutions by age classes compared with the relative percentage in each age group to the percentage of the total population in the several age groups; (b) a study of the ratio of arrests reported by the police compared with population in those age groups.

In the United States in 1937 the following table from a release by the Census Bureau shows the gross numbers received from the courts in that year:

⁸ *Uniform Crime Reports*, Vol. XI, No. 4, *Fourth Quarterly Bulletin*, 1940 (Washington, D. C., 1941), p. 186.

This release, however, does not give the number for each 100,000 of the population in each age group. It shows only that the largest number was in the age group twenty-one to twenty-four. The latest available data on this basis from the census is a report on the prisoners received from courts in 1935. The following table shows that per 100,000 of the population of the same age and sex age groups nineteen and twenty had the highest ratio for both males and females.

PRISONERS RECEIVED FROM COURTS, BY AGE AND SEX: 1935 *

(Ratios Based on Estimated Population as of July 1)

Age	Total	Male	Female	Per 100,000 of Population of Same Age and Sex	
				Male	Female
Total	65,723	62,569	3,154	—	—
Under 15 years	26	23	3	—	—
Total 15 years and over	65,697	62,546	3,151	140.6	7.2
15 to 17 years	2,515	2,370	145	71.1	4.4
18 years	2,862	2,718	144	243.0	13.3
19 years	3,688	3,536	152	313.1	13.9
20 years	3,504	3,344	160	314.7	15.2
21 to 24 years	13,618	13,029	590	304.3	13.8
25 to 29 years	12,514	11,920	594	239.8	11.5
30 to 34 years	8,882	8,459	423	186.2	9.1
35 to 39 years	6,752	6,370	382	150.7	9.0
40 to 44 years	4,231	3,996	235	91.9	5.6
45 to 49 years	2,947	2,795	152	73.9	4.3
50 to 54 years	1,858	1,763	95	53.7	3.1
55 to 59 years	1,089	1,048	41	38.0	1.6
60 to 64 years	664	645	19	31.5	1.0
65 years and over	517	506	11	14.0	0.3
Not reported	56	48	8	—	—

* *Prisoners in State and Federal Prisons and Reformatory: 1935*, Bureau of the Census (Washington, D. C., 1937), Table 31, p. 37.

A study of 1,153 prisoners in Wisconsin in 1931 shows a like high proportion in the age groups between twenty and thirty-five years of age. In the age group below twenty there were few prisoners in this sample, since most of them are sent to other institutions than the prison and reformatory. But in the other age groups up to thirty the preponderance of prisoners is shown by the following table.

From this table it is clear that the three types of offenders in this sample have a widely different age-group distribution. For example, for the age group thirty and above the sex offenders alone have a higher percentage than the males in the population of the state, while the murderers and property offenders have a lower. In the age group twenty to twenty-four murderers and property offenders have a higher rate than the males of the state, while the sex offenders have a lower rate. All three

types of offenders have higher percentages than the male population of the state in the age group twenty-five to twenty-nine, but the sex offenders have a lower percentage than the other two classes of offenders.

AGE GROUPS OF WISCONSIN MALE POPULATION AND OF MALE OFFENDERS
AT ENTRY INTO PRISON *

Age Group	Wisconsin Male Population		Murderers		Rapists and Sodomists		Property Offenders	
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent
15 to 19 years	137,500	12.7	2	2.2	6	4.7	24	2.6
20 to 24 years	123,712	11.5	17	18.6	12	9.4	193	20.7
25 to 29 years	114,879	10.6	22	23.9	19	14.8	262	28.0
30 and over	702,938	65.1	51	55.3	90	70.3	454	48.7
No information	948	0.1	0	0.0	1	0.8	0	0.0
Total	1,079,977	100.0	92	100.0	128	100.0	933	100.0

* Wisconsin male population fifteen years and over, 1930; age at entry into prison: murderers, 1931; rapists, 1933; sodomists, 1933.

The other method of studying the distribution of offenders by age is to take the data of arrests reported to the FBI. Here it must be remembered that these are the arrests reported by the police in the territory containing somewhat more than half of the population of the country; in the report, also, they are not distributed by their ratio to the general population of the same age and sex. The graph and table on pp. 50-51 indicate the situation in 1940.

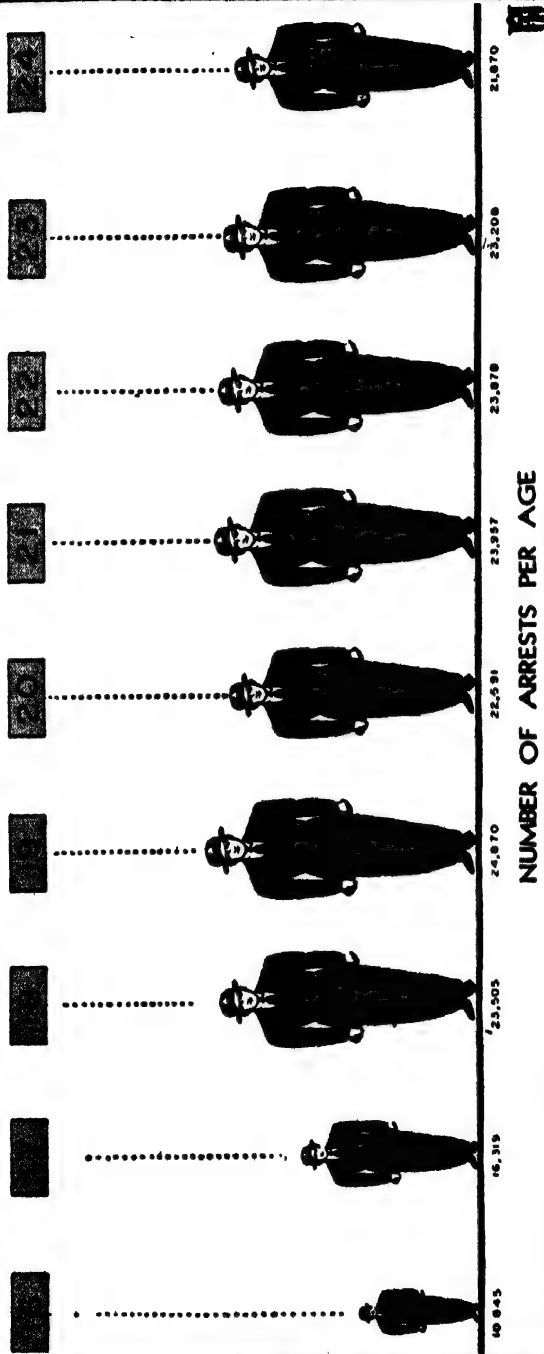
The outstanding showing of this table is that youth is the most criminal age in the life of man: (a) The age group twenty to twenty-four stands first in the number of arrests for seventeen crimes; all the other age groups combined have the preëminence in only eleven crimes. (b) The age group standing next as to the number of crimes in which it leads is that of twenty-five to twenty-nine, with seven crimes. (c) By combining the total arrests at the bottom of the table under the columns fifteen to nineteen, twenty to twenty-four, and twenty-five to twenty-nine (284,904) and dividing that total by the total of all arrests reported (609,013), it is seen that persons between the ages of fifteen to thirty constituted 46.7 per cent of the total arrests reported. By observing the italicized figures in the table it is possible to see what age group had the preëminence for each crime. But when, as in the following table, these figures are reduced to percentages of the total arrests and compared with the percentages of those age groups in the general population of the country based upon a 5 per cent sample of the 1940 census, a different situation is revealed.

It appears that the percentage of all arrests for age group twenty to twenty-four is more than twice that of the population in that age group,

NUMBER OF PERSONS ARRESTED AGES 16 TO 24

From *Quarterly Bulletin*, Vol. XI, No. 4, *Fourth Quarterly Bulletin*, 1940, Federal Bureau of Investigation (Washington, D. C., 1941), p. 206.

AGE



Reproduced from *Uniform Crime Reports*, Vol. XI, No. 4, *Fourth Quarterly Bulletin*, 1940, Federal Bureau of Investigation (Washington, D. C., 1941), p. 206.

Offense Charged	Age										Total, All Ages
	Not Known	Under 15	15-19	20-24	25-29	30-34	35-39	40-44	45-49	50 and Over	
Criminal homicide	8	23	547	1,308	1,277	953	731	529	355	620	6,351
Robbery	11	44	2,822	4,224	2,619	1,549	976	527	246	233	13,251
Assault	21	56	2,706	4,466	6,679	4,485	4,397	3,075	2,057	3,076	34,018
Burglary—breaking or entering ..	37	985	12,427	8,729	4,866	3,111	2,057	1,219	719	739	34,859
Larceny— <u>theft</u>	53	1,152	15,445	14,196	9,372	6,792	5,558	3,877	2,572	3,423	62,440
Auto theft	7	219	5,868	3,681	1,955	907	549	270	113	95	13,364
Embezzlement and fraud	8	16	900	3,182	3,269	3,017	2,755	2,278	1,633	2,074	19,132
Stolen property; buying, receiv- ing	3	15	498	768	592	492	374	284	218	333	3,577
Arson	2	19	145	193	153	123	116	102	78	150	1,081
Forgery and counterfeiting	2	12	773	1,556	1,259	1,103	876	645	424	455	7,105
Rape	2	11	1,154	1,730	1,093	653	455	304	221	408	6,031
Prostitution and commercialized vice	3	1	409	2,447	2,337	1,513	944	600	361	372	8,987
Other sex offenses	13	10	967	1,826	1,665	1,309	1,118	830	657	1,153	9,548
Narcotic drug laws	3	3	326	1,013	980	714	688	537	342	408	5,014
Weapons; carrying, possessing, etc. ..	6	8	754	1,272	1,048	797	625	445	299	430	5,684
Offenses against family and chil- dren	7	6	233	1,293	1,682	1,562	1,256	918	524	497	7,978
Liquor laws	8	8	517	1,548	1,772	1,533	1,435	1,051	817	1,268	9,957
Driving while intoxicated	33	8	679	3,691	5,132	5,124	4,722	3,636	2,491	3,287	28,803
Road and driving laws	3	4	712	1,750	1,198	811	550	381	243	301	5,953
Parking violations	—	—	3	12	6	5	10	3	5	5	49
Other traffic and motor vehicle laws	6	17	1,291	2,573	1,868	1,261	973	633	378	498	9,498
Disorderly conduct	33	79	2,929	5,875	5,123	4,165	3,586	2,651	1,928	3,034	29,403
Drunkenness	126	17	2,874	11,323	15,227	17,815	19,119	16,498	12,236	20,613	115,848
Vagrancy	34	90	6,711	10,522	8,676	7,188	6,302	4,685	3,427	6,029	53,664
Gambling	10	7	518	1,594	2,260	2,168	2,089	1,750	1,183	1,704	13,283
Suspicion	49	548	9,930	13,800	10,999	8,413	6,810	4,587	2,962	3,992	62,000
Not stated	15	21	405	779	784	634	570	389	294	395	4,286
All other offenses	35	724	7,001	8,153	6,025	4,301	3,741	2,842	1,909	2,998	37,789
Total	538	4,103	69,844	115,504	99,556	83,498	73,382	55,546	38,692	58,590	609,013

* Reading across the table the italicized numbers indicate the age group having the highest number for a particular crime.

* Adapted from Table 93, *Uniform Crime Reports*, Vol. XI, No. 4, *Fourth Quarterly Bulletin 1940* (Washington, D. C., 1941), p. 207.

while the percentage of arrests of the age groups fifteen to nineteen, twenty-five to twenty-nine, thirty to thirty-four, and thirty-five to thirty-nine is about or less than twice that of the total population in those age groups. The age group having the largest percentage of arrests relative to its proportion in the general population is that of twenty to twenty-four.

	Percentage of Population—1940 *	Percentage of Arrests—1940 †
15 to 19 years.....	9.4	11.47
20 to 24 years.....	8.8	18.96
25 to 29 years.....	8.4	16.34
30 to 34 years.....	7.8	13.71
35 to 39 years.....	7.3	12.05
40 to 44 years.....	6.7	9.12
45 to 49 years.....	6.2	6.35

* From *Sixteenth Census of the United States; 1940*, Series P-5, No. 9, Table 2, p. 2. (Preliminary Report.)

† Calculated from Table 93, *Uniform Crime Reports*, Vol. XI, No. 4, *Fourth Quarterly Bulletin*, 1940 (Washington, D. C., 1941), p. 207.

Moreover, Sellin in his study *The Criminality of Youth*, prepared for The American Law Institute as an aid to it in formulating The Youth Correction Act, showed in Chapter I that in all violations of law without regard to type of offense the youth group does not show a high incidence. But in crimes against property its offense rate is abnormally high.

Sex. Is the one sex more criminal than the other? Are the offenses committed by males the same as those committed by females? Does age have an effect upon the crimes committed by the sexes?

In 1938 of the adults guilty of felony received from courts by prisons and reformatories in the United States nearly twenty-one males were received for every female; of the native white, over twenty-nine males to one female; of foreign-born white, over thirty-one; and of Negroes, almost eighteen.⁴ The ratio between the sexes varied, however, in the various geographic divisions of the country.⁵

These facts, when considered in the light of others, such as race and the differences in standards between city and country, probably are to be explained in part by the large Negro population in the South and in the cities of the North.

. What difference is there in the offenses committed by the two sexes?

⁴ *Prisoners—1938: Summary Statistics of Prisoners in State and Federal Prisons and Reformatories*, Bureau of the Census (Washington, D. C., Oct. 14, 1939), Table 9, p. 8.

⁵ Numbers received from the courts rather than prisoners in institutions are taken, because receptions are a better basis for the measurement of the extent of criminality than number of prisoners, since where sentences are long there will be larger numbers in institutions than where the sentence is short. On the other hand, one must remember that in the census statistics there is no way of determining how many of the commitments are for more than once in any given year in any particular section of the country.

The census report gives the following table showing the percentage of females received from courts convicted of felony during 1938 for each important offense compared with that of the males.

FELONY PRISONERS RECEIVED FROM COURTS, BY SEX AND OFFENSE: 1938 *

Offense	Total		Male		Female	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
All offenses	64,265	100.0	61,833	100.0	2,432	100.0
Murder	1,961	3.1	1,826	3.0	135	5.6
Manslaughter	1,687	2.6	1,472	2.4	215	8.8
Robbery	6,082	9.5	5,978	9.7	104	4.3
Aggravated assault	3,255	5.1	3,087	5.0	168	6.9
Burglary	13,068	20.3	12,966	21.0	102	4.2
Larceny, except auto theft	11,503	17.9	11,089	17.9	414	17.0
Auto theft	3,632	5.7	3,598	5.8	34	1.4
Embezzlement and fraud	1,935	3.0	1,866	3.0	69	2.8
Stolen property	537	0.8	510	0.8	27	1.1
Forgery	5,522	8.6	5,336	8.6	186	7.6
Rape	1,954	3.0	1,954	3.2	—	—
Other sex offenses	2,155	3.4	1,832	3.0	323	13.3
Violating drug laws	2,369	3.7	2,125	3.4	244	10.0
Carrying, etc., weapons ..	317	0.5	311	0.5	6	0.2
Non-support or neglect .	575	0.9	482	0.8	93	3.8
Violating liquor laws ...	4,792	7.5	4,677	7.6	115	4.7
Violating traffic laws ...	354	0.6	349	0.6	5	0.2
All other offenses	2,567	4.0	2,375	3.8	192	7.9

* Prisoners—1938: *Summary Statistics of Prisoners in State and Federal Prisons and Reformatories*, Bureau of the Census (Washington, D. C., Oct. 14, 1939), Table 6, p. 7.

From this table it is apparent that among the offenses by females for which they were committed to prisons and reformatories those that stood out most prominently were: larceny except auto theft, sex offenses other than rape, and violating drug laws. These three offenses make up 40.3 per cent of the felonious offenses for which women were sent to prisons and reformatories in 1938. The four main offenses for which the males were sent to prisons and reformatories were burglary, larceny except auto theft, forgery, and robbery.

If we take the arrests in 1940 reported to the FBI, the relative incidence of arrests for the two sexes is shown in the table on p. 54.

Here it is to be seen that the grounds for arrest of females of the greatest frequency were: larceny-theft, prostitution and commercialized vice, drunkenness, vagrancy, suspicion, and disorderly conduct. For the males the highest percentages were: drunkenness, larceny-theft, suspicion, vagrancy, disorderly conduct, and assault.

The differences between the two sexes are probably due to variations in occupation, in the social rôle assigned to the two sexes, and to the differences in training. The male is looked upon as predominant in

DISTRIBUTION OF ARRESTS BY SEX, JANUARY 1 TO DECEMBER 31, 1940 *

Offense Charged	Total	Per Cent	
		Male	Female
Criminal homicide	1.0	1.0	1.3
Robbery	2.2	2.3	1.1
Assault	5.6	5.5	6.3
Burglary—breaking or entering	5.7	6.1	1.1
Larceny—theft	10.3	10.2	10.3
Auto theft	2.2	2.4	0.4
Embezzlement and fraud	3.1	3.2	2.1
Stolen property: buying, receiving, etc.	0.6	0.6	0.5
Arson	0.2	0.2	0.2
Forgery and counterfeiting	1.2	1.2	0.9
Rape	1.0	1.1	—
Prostitution and commercialized vice	1.5	0.4	12.5
Other sex offenses	1.6	1.5	2.7
Narcotic drug laws	0.8	0.5	3.8
Weapons: carrying, possessing, etc.	0.9	1.0	0.5
Offenses against family and children	1.3	1.4	0.5
Liquor laws	1.6	1.5	3.5
Driving while intoxicated	4.7	5.0	1.5
Road and driving laws	1.0	1.1	0.2
Parking violations	†	†	—
Other traffic and motor vehicle laws	1.6	1.7	0.4
Disorderly conduct	4.8	4.6	7.0
Drunkenness	19.0	19.4	14.5
Vagrancy	8.8	8.8	9.1
Gambling	2.2	2.3	1.5
Suspicion	10.2	9.9	13.0
Not stated	0.7	0.7	0.6
All other offenses	6.2	6.4	4.5
Total	100.0	100.0	100.0

* *Uniform Crime Reports*, Vol. XI, No. 4, *Fourth Quarterly Bulletin*, 1940 (Washington, D. C., 1941), Table 92, p. 204.

† Less than one-tenth of 1 per cent.

earning and spending; he must get the money for the support of a family, or when unmarried to sustain his economic and social position. The female is more closely protected than the male and has been assigned a rôle in life that aside from the exploitation of her sex does not offer so many temptations to crime. That the female is more conspicuous in sex offenses than the male is due largely to the selective nature of the law relating to that type of crime. More men are engaged in sex offenses than women, but the law does not punish the male as it does the female. The woman, because of her desire for articles of apparel that can easily be concealed on her person, is preëminent in shoplifting. While she is less frequently arrested and convicted for crimes against the person than the male, yet it is rather striking that a large percentage of her crimes are for personal violence, whether commitments or arrests are considered.

According to the *Uniform Crime Reports* of those arrested in 1940,

51.0 per cent of the males and only 38.6 per cent of the females had previous fingerprints on file with the FBI.⁶

Race and Nativity. That the numbers of non-white received by the prisons and reformatories in the United States in 1938 are much larger than the white relative to their numbers in the general population in 1940 is shown by the following figures: One out of every 526 of the non-white population fourteen years of age and over was received from courts, while only one out of every 1,957 whites in the general population was convicted and incarcerated. Or, stated in numbers per 100,000 of the population above fourteen years of age, for each the ratio was 51 for whites and 190 for non-whites.⁷

A study of 1,153 prisoners in Wisconsin showed that compared with the total male population of Wisconsin fifteen years of age and over the proportion of native-born prisoners was about the same as that in the population, but that the proportion of the foreign-born was slightly less and that of the Negro and other races was much more than their proportions in the population. Of the murderers, sex and property offenders the proportion of the foreign-born, the Negro, and other races was distinctly higher than their proportions in the population of the state. Of the property offenders the native-born had a slightly higher proportion than in the state's male population.⁸

If arrests reported to the FBI be considered the table on p. 56 shows the relative proportions.

This shows that Negroes were arrested almost three times as frequently as native whites. They were incarcerated in prisons and reformatories almost four times as frequently relative to their numbers in the population. Moreover the above table shows that Negroes were arrested more frequently for every crime, except for forgery and counterfeiting, and for driving while intoxicated.

One should keep in mind, however, in considering these differences as shown by reception from courts. that the Negroes are a socially subject race and that some of the difference may be due to discrimination against them in the courts and the community. Furthermore, it is probable that, compared with the white man, the Negro charged with crime is less frequently able to employ expert counsel to defend his case. Also he has greater difficulty in securing and holding a job.⁹

⁶ *Uniform Crime Reports*, Vol. XI, No. 4, p. 214.

⁷ Derived from figures reported by the Census Bureau on preliminary data on the 1940 census based upon a 5 per cent cross-section of the 1940 census returns and from *Prisoners—1938* (Release for afternoon papers on Dec. 20, 1939), Table 9, p. 8. See also Von Hentig, "The Criminality of the Negro," *Journal of Criminal Law and Criminology*, Jan.-Feb., 1940, pp. 662-680.

⁸ Unpublished ms. by the author.

⁹ See National Commission on Law Observance and Enforcement, No. 13, *Report on the Causes of Crime* (Washington, D. C., 1931), Vol. I, pp. 221-256. For a very good discussion of other reasons why the Negro ranks high in arrests and commitments to institutions for criminals see Sellin, "The Negro Criminal: A Statistical Note," *The Annals of the American Academy of Political and Social Science*, Nov., 1928.

NUMBER OF ARRESTS OF NEGROES AND WHITES IN PROPORTION TO THE NUMBER OF EACH
IN THE GENERAL POPULATION OF THE COUNTRY, MALE AND FEMALE JANUARY 1—
DECEMBER 31, 1940, RATE PER 100,000 OF POPULATION *

(Excluding those under 15 years of age)

<i>Offense Charged</i>	<i>Native White</i>	<i>Foreign-born White</i>	<i>Negro</i>
Criminal homicide	4.6	3.3	31.6
Robbery	12.4	2.3	50.6
Assault	23.2	16.2	185.8
Burglary—breaking or entering	36.3	6.1	103.0
Larceny—theft	61.1	15.4	214.7
Auto theft	16.0	1.9	24.4
Embezzlement and fraud	23.0	7.3	27.4
Stolen property: buying, receiving, etc. ...	3.3	2.7	12.0
Arson	1.1	0.9	2.3
Forgery and counterfeiting	9.3	1.6	7.9
Rape	6.2	2.5	16.5
Prostitution and commercialized vice	8.7	1.5	28.4
Other sex offenses	10.5	6.1	17.7
Narcotic drug laws	4.5	1.2	12.0
Weapons: carrying, possessing, etc.	3.9	2.2	32.3
Offenses against family and children	9.0	3.9	15.5
Liquor laws	6.9	4.3	58.4
Driving while intoxicated	35.6	10.9	24.4
Road and driving laws	6.5	1.3	16.0
Parking violations	0.1	(†)	0.1
Other traffic and motor-vehicle laws	10.1	2.5	24.7
Disorderly conduct	27.6	12.9	102.0
Drunkenness	128.9	42.9	176.5
Vagrancy	56.4	17.2	129.7
Gambling	8.0	5.5	69.1
Suspicion	63.3	13.9	206.3
Not stated	4.6	1.6	10.4
All other offenses	38.8	13.6	108.4
Total	619.9	201.7	1,708.1

* Population figures from federal census, Apr. 1, 1930; arrests from *Uniform Crime Reports*, Vol. XI, No. 4, *Fourth Quarterly Bulletin*, 1940 (Washington, D. C., 1941), Table 107, p. 225.

† Less than one-tenth of 1 per 100,000.

How do the Negro males compare with the Negro females in criminality, measured by the proportion of those received from courts by prisons and reformatories? While only one white female to twenty-nine white males was received, there was one Negro female to every eighteen Negro males. Or to put it another way, there was one Negro male to every 2.9 white males, but there was one Negro female to every 1.7 white females received. In short, the criminality of the Negro female as measured by reception from courts by prisons and reformatories in the United States is much closer to that of the Negro males than that of the white women to the white men.¹⁰

The United States has in its population representatives of more nation-

¹⁰ *Prisoners—1938* (Release for afternoon papers on Dec. 20, 1939), Table 9, p. 8.

alities than any other country in the world. In 1938 there were received from courts by prisons and reformatories in the United States one foreign-born to fifteen native-born whites. On the basis of arrests reported to the FBI in 1940, as shown in the preceding table, foreign-born whites were arrested less than one-third as frequently as native-born whites relative to their numbers in the population fifteen years of age and over (201.7 compared with 619.9 per 100,000 of the population). It is clear that the old assumption that foreigners are responsible for more than their share of crime is quite incorrect.

The situation is all the more favorable if we remember that, as in the case of the Negroes, the foreign-born belong to the laboring class, are poor, and therefore do not have the money to pay lawyers to fight their battles for them in the courts. Furthermore, like the Negroes they are a lower economic and social class and suffer somewhat by that fact.¹¹ Both Negroes and foreign-born have in recent years gone to the cities in large numbers. Both historically have been habituated to country life. The foreign-born have an undue proportion of their numbers in urban communities.

It has been widely believed that the children of the foreign-born are more delinquent than children of the native-born. The Wickersham Commission reported such a belief prevalent among "practically every law-enforcement officer who was interviewed in the course of this study." Many criminologists have shared this view. That Commission used figures from only Buffalo and Detroit as to the relative numbers of the age and population class charged with certain offenses in those two cities. In the cases of rape, robbery, assaults, burglary (including breaking and entering), larceny-theft, and auto-theft, the children of the foreign-born had a higher ratio than the children of native-born; in all other crimes, less.¹²

The figures given in *Juvenile Court Statistics and Federal Juvenile Offenders*,¹³ do not provide the ratio of juvenile delinquents of native parentage to those of foreign parentage; it gives only absolute numbers and percentage of those with one or both parents foreign-born. That report does, however, show that, as we might expect from the decrease in the numbers of immigrants admitted to this country recently, the relative number of juvenile delinquents who are children of foreign parents to those of native parents, steadily decreased from 1929 to 1936.

Marital Condition. In 1938, in the United States, of those received from courts by prisons and reformatories 41.3 per cent were married, 50 per

¹¹ Hart, "Immigration and Crime," *Proceedings of the National Conference of Charities and Correction*, 1896, p. 307; "Immigration and Crime," *American Journal of Sociology*, Vol. II, p. 369; Hourwich, "Immigration and Crime," *American Journal of Sociology*, Vol. XVII, p. 470. See also National Commission on Law Observance and Enforcement, No. 10, *Report on Crime and the Foreign Born* (Washington, D. C., 1931), Part II.

¹² National Commission on Law Observance and Enforcement, No. 10, *op. cit.*, Table XVII, p. 158

¹³ Children's Bureau Publication No. 245 (Washington, D. C., 1939), Table F, p. 11.

cent were single, 3.1 per cent were widowed, and 5.6 per cent were divorced.

The following table compares the percentages in the various marital statuses between males and females and between the prisoners committed to prisons and reformatories and the general population fifteen years and older in the United States.

	Percentage, Prisoners Committed, 1938 *		Percentage, Population 15 Years and Older, 1940 †	
	Male	Female	Male	Female
Single	51.0	26.3	33.2	25.8
Married	40.8	54.1	61.2	61.0
Widowed	2.7	11.5	4.3	11.5
Divorced	5.5	8.1	1.3	1.7
	100.0	100.0	100.0	100.0

* Prisoners—1938, *Summary Statistics of Prisoners in State and Federal Prisons and Reformatories*, Bureau of the Census (Washington, D. C., Release of Dec. 20, 1939), Table 10, p. 8

† Sixteenth Census of the United States: 1940, *Population*, Vol. IV, Part I, United States Summary, Table 9, p. 5.

It is clear that single and widowed female prisoners form about the same percentage as in the general population, married women prisoners a smaller percentage, and divorced women prisoners a much larger percentage than women of the same marital status in the population.

On the other hand, the single and divorced male prisoners have a much higher percentage, whereas married and widowed prisoners have a much lower percentage than males of the same marital status in the population.

Education. Of those committed to prisons and reformatories in the United States during the first half of 1923, 10.7 per cent were illiterate, as compared with 7.1 per cent of the total population of the country. Only 14.4 per cent of those committed had attended high school; 3.4 per cent of those committed had attended college; and but 1.0 per cent had attended a trade school. The females were less illiterate than the males (8.5 per cent to 10.8 per cent); more had attended high school (16.1 per cent to 14.3 per cent); and fewer had attended college (2.8 per cent to 3.4 per cent).¹⁴

The ratio of commitments per 100,000 of the adult population was 42.7 for the illiterate as against 27.3 for those able to read and write. Among the literate the commitment ratio was highest for those with an elementary education (31.4) and lowest for prisoners who had college experience. The illiterate had a commitment ratio about three times as great as the college graduate.

The degree of education among these prisoners varied with the crime for which they were convicted. Compare the percentage of illiterates convicted of the various crimes; assaults, 24 per cent; homicide, 19.7; vio-

¹⁴ *The Prisoners' Antecedents*, Bureau of the Census (Washington, D. C., 1929), p. 18.

lating liquor laws, 17.3; rape, 14.3; drug violators, 11.5; burglary, 10.8; larceny, 8.1; robbery, 6; having stolen property, 6.9; forgery, 2.9; fraud, 2.6; embezzlement, .8.

The degree of education probably acts as a selective agent in determining behavior. To some extent it determines occupation and economic welfare. It has a bearing upon diversity of interests of the individual. It indicates whether the individual in some cases has sufficient intelligence to foresee the consequences of his acts. Often it determines his social status; because of the lack of it one finds his friends among the less law-abiding members of society. And, finally, education may enable one to escape the penalties of the law when he has broken it. It is significant that the less the education the more violent the crime committed.¹⁵

Employment. The prisoners committed to state and federal prisons and reformatories for the first six months of 1923 on the average were unemployed 26 per cent of the time that year. This figure is in striking contrast with the 10 per cent of time lost by the industrial wage earner in the general population. While prisoners and industrial workers are not strictly comparable, yet the difference between the two seems significant. Prisoners apparently came from a class in which there was an unusual amount of voluntary or involuntary unemployment.

Moreover, the amount of time unemployed varies greatly with the type of crime for which prisoners were committed. Of the male prisoners who had been unemployed more than nine months the following offenders were high: drug law violators (11.4 per cent), burglars (11 per cent), robbers (9.1 per cent), thieves (8.2 per cent), and receivers of stolen property (8.2 per cent). On the other hand, the following offenders had a much smaller percentage unemployed for over nine months: embezzlers (2.8 per cent), killers (3.7 per cent), and rapists (3.9 per cent). Of the females, over a fourth (27.3 per cent) of the prostitutes and of those committed for fornication had been unemployed over nine months, while only a trifle over a seventh (13.7 per cent) of the thieves had been unemployed so long.¹⁶ It is clear, therefore, that an unusual proportion of prisoners in the "higher" penal institutions have been unemployed.

Other studies have shown the probability that lack of a job, unsteady employment, and widespread unemployment are closely correlated with crime rates, especially those against property.¹⁷ A study by the author of a sample of inmates of the Wisconsin State Prison and their non-convict brothers showed that the prisoners commenced a work career earlier than their brothers, and that they were much more unsteady in holding a job.¹⁸

¹⁵ *Ibid.*, p. 19. Unfortunately the census has not reported on the education of prisoners since 1929. That report was based on the data from the first six months of 1923.

¹⁶ *The Prisoners' Antecedents*, p. 38.

¹⁷ National Commission on Law Observance and Enforcement, No. 13, *op. cit.*, Vol. I, pp. 163-333.

¹⁸ Gillin, "Backgrounds of Prisoners in the Wisconsin State Prison and of their Brothers," *American Sociological Review*, Vol. II, No. 2 (Apr., 1937), pp. 204-212.

Ecological Conditions and Criminality. In recent years social ecologists have studied the incidence of crime in relation to the varying physical conditions found within a city, or between a center of population and its surrounding territory. They attempt to ascertain the varying incidence of crime in the different parts of the city, and in connection therewith to study the physical, economic, and social conditions associated with the varying crime rates.

The University of Chicago was the pioneer in such studies, and the method has been applied to that city with greater thoroughness than anywhere else.¹⁹

The chief results of this method show that delinquency occurs most frequently in deteriorated or transitional areas, in which the usual businesses once carried on there are moving out to other areas, and which are now occupied by cheap lodgings and deteriorated dwellings. Instead of having residents owning their own homes, and having all the institutions characteristic of a neighborhood of well-to-do people, more or less homogeneous economically and socially, these areas attract the poorer, frequently moving families, the immigrant, the unattached individuals, and the shady characters who there find an opportunity to carry on their questionable practices. The physical conditions of housing, sanitation, cheap rents, shady saloons, low dance halls and houses of prostitution select a population having habits and customs, ideals and values at variance with those of the persons who enact the laws and enforce them. The ecological conditions are not directly the factors of criminality; they act as selective agents of those elements in the population that are not well integrated into the dominant social organization. They provide the foci for the aggregation of criminal adults who by association develop other criminals, both juvenile and adult, and so produce areas characterized by an unusually high crime rate.

The whole theory of the ecological study of delinquency as developed in the Chicago studies has been attacked by Robison, especially as applied to such a study in New York City. She argues that delinquency rates in that city show no such radial distribution from any focal point within New York City as Shaw and McKay have tried to establish in the cities reported on by them. She also raises a question as to whether the data they used shows this radial distribution in the cities on which they reported, since the zones on the periphery of the city contain many more square miles than those in the center.²⁰ She also argues that the delinquency index used in these ecological studies is not a true index of delinquency, and therefore the radial distribution cannot be assured.

¹⁹ Reckless, *Vice in Chicago* (Chicago, 1933); Shaw, *Delinquency Areas* (Chicago, 1929). For such studies in other cities see Clifford Shaw and H. D. McKay, *Social Factors in Juvenile Delinquency*, in National Commission on Law Observance and Enforcement, No. 13, *Report on the Causes of Crime*, Vol. II, Part II, II-V; and by same authors, *Juvenile Delinquency and Urban Areas* (Chicago, 1942).

²⁰ Robison, *Can Delinquency be Measured?* (New York, 1936).

A Crime Index. Robison's main argument is not directed against the studies by the Chicago scholars, but at the fallacies hidden in the assumption that any index so far used, even those used in her own study in New York, really gives a true delinquency index. Her conclusion is that crime cannot be measured by any methods so far devised. In the criticism of statistical indices of crime Miss Robison was preceded by others who have appreciated that the measures used, whether of delinquents and criminals sentenced, the number of arrests, the number of delinquents handled by unofficial social agencies, or the number of crimes known to the police, are inadequate bases of a delinquency or a crime rate.²¹ One might think that, in the light of these criticisms, the statistical study of crime has no value. Such a conclusion would be as erroneous as the assumptions these criticisms attack. The statistics on any aspect of criminal physiognomy cannot be taken as mathematically certain indices of crime and delinquency. It must be remembered that they measure only certain facts about crime and criminals—those of which we have records. Also we must not forget that many crimes are not discovered; that many discovered are not reported, that many "shady" business transactions, while illegal, are so nearly like some that are legal that the perpetrators are not brought to justice; that only a small proportion of those accused of crime are prosecuted and a still smaller number convicted; and that even the reporting is not very accurate. But in spite of all these difficulties, some of these statistics help to measure trends and carefully analyzed indicate certain tendencies that are of the greatest importance in raising questions that can be attacked by other methods.

Such, in the most important aspects of its distribution, is the configuration of criminal behavior in the United States in 1940, a time of peace and prosperity. This sort of analysis does not reveal the underlying factors of criminal conduct. Those factors are the points of chief interest for those who would understand why people commit crime and thus know how to handle the criminal and how to plan a program of prevention. But to know how those who violate the laws distribute themselves as to state boundaries, age, sex, race, nativity, marital condition, education, and employment helps us to see the general outlines of the physiognomy of the problem of crime. There are a few criminologists who have despaired of isolating the factors of criminal conduct and therefore fall back on such an analysis as we have attempted in brief in this chapter.²² It is possible that they are right. We may have to retreat from the attempt to unearth

²¹ See for some of the discussions on this point: Warner, "Crimes Known to the Police—an Index of Crime?" *Harvard Law Review*, 1931-1932, Vol. 45, pp. 307-334; Sellin, "The Basis of a Crime Index," *Journal of Criminal Law and Criminology*, 1931-1932, Vol. 22, pp. 335-356; *Research Memorandum on Crime in the Depression*, Social Science Research Council (New York, 1937), Ch. 4; E. H. Sutherland and Van Vechten, "The Reliability of Criminal Statistics," *Journal of Criminal Law and Criminology*, 1934-1935, Vol. 25, pp. 10-20.

²² Reckless, *Criminal Behavior* (New York, 1940), pp. 1-3.

the motivations that impel some people to live a law-abiding life, and those that impel to law-breaking, and be content with the knowledge of variations in conduct afforded by the present statistical information. But the work of the psychologists and of the psychiatrists in human motivation, and that of the social psychologists in uncovering the relation between social conditions under which people develop and live and their motivations, promise light upon the question as to why people behave as they do.

It must be remembered, however, that this picture is a static one. It represents the criminal physiognomy, not only of a particular people, that of the United States, but also of that people at a specific time, 1940. Had we taken the picture in the middle of the 1930's, when the economic depression was deepest, in some respects the physiognomy would have been different. In 1940 our defense efforts had galvanized into activity many of our great industries; there was increasing employment; but the tempo of industrial and commercial life had not then reached the rapid pace of 1943. Wars, like economic depressions, distort the picture presented by such a situation as that existing in 1940. During a war the male adult population in the prisons and reformatories diminish. Many of the potential criminals of peace times are in the armed forces. The sex ratios of criminals during a war are different from those in peace. Juvenile delinquency increases. Also just following a war in the past there has been a great increase in certain types of crime. This gives the newspaper and magazine writers their "crime waves." Here again the picture changes. The physiognomy of crime is still picture, not a movie. Something of the latter will be presented in the discussion of the making of the criminal.

QUESTIONS AND EXERCISES

1. Why can we not say that, since the high incidence of crime occurs at the age twenty-one to twenty-four, youth is a cause of crime?
2. Explain why it should appear from the census figures that crime is greater in one section of the country than in another.
3. Why should drunkenness not appear among the three most important crimes before the age group twenty-five to thirty-four?
4. Explain why males are so much more criminal than females; why Negro females are so much more criminal than white women; why Negroes are more criminal than whites; why whites exceed Negroes in commitments for drunkenness.
5. From the figures cited in the text would you say that married life is less conducive to crime than single life? Why?
6. Why is juvenile criminality of so much more serious import than adult?
7. If there is an unusual proportion of the foreign-born in the age groups twenty-one to twenty-four, twenty-five to thirty-four, what effect would that have upon their crime rate? Why?
8. Explain the higher crime rate of the illiterates; of the unemployed.
9. Suggest an explanation of the rather close association between unemployment and unstable employment and crime.

Part II

THE MAKING OF THE CRIMINAL

INTRODUCTION TO PART II

Pre-literate man observed things about him as accurately as the educated man of Western civilization. His interpretation of what he observed was often defective, not because he could not reason as well as modern man, but because he did not have at his command enough facts. The mythologies of all peoples reveal their attempts to account for the world about them. Cause and effect they assumed as do we. To the Greeks the dawn was due to the appearance of glorious Aurora. The sun in his sweep across the heavens was a god on his chariot. To the Hebrews the earth was created by the Almighty Creator. The diversity of human speech was explained by the jealousy of God, who feared that the vaunting ambition of men with one language might be able to build a tower high enough to breach the battlements of Heaven. In some affairs like the breeding of animals and grains each was observed to reproduce "after its kind." But in other matters personal causation was invoked to explain what was observed. In the latter were involved the workings of Fate, Chance, or Providence. Caprice, rather than an ordered sequence of events due to the interplay of unconscious factors, was assumed to explain certain events. Pestilence, flood, hurricane, mental illness, and so on, were viewed as the products of some whimsical being—a god or devil. Gradually, history unfolds a growing acceptance of naturalistic explanations of the observable phenomena of the world, first in the physical sphere, then in the field of social behavior. Every social event or condition, it was believed, has its cause. No longer were the ingenious, but mysterious and wholly unpredictable, powers believed to have induced the condition or event in question.

Observers in the past, in their pursuit of the naturalistic explanation of social phenomena, were led astray by the circumscribed perspective that contemporary precedent and methods of research afforded them. In not a few instances the research resolved itself into a quest for a single cause.

History reveals myriad attempts to isolate such materialistic causative factors in aberrant behavior of man. As early as 1833, A. M. Guerry, one

of the pre-Lombrosian criminologists whose work is quite modern in tone, wrote as follows: "In each epoch there are certain general causes by means of which one attempts to explain everything, and the effects of which are noted everywhere." In France the individual variants were attributed, "... always according to the dominant ideas of the time ... to the influence of temperance, nourishment, and finally, to elementary instruction, to industry, to religious influences, and to the influence of political law."¹ A later English writer "... devoted his efforts to a refutation of what were perhaps three of the major current theories of crime causation in his day (*ca.* 1850), namely, that crime was due to poverty, to ignorance, and to density of population."² Even in recent years, when the hope of finding *the* cause had waned, there still persisted the belief that there was a dominant factor that would explain the bulk of behavior of those persons whom we class as abnormal. Illustrations of these attempts will be given below. It is not difficult to understand the ease with which individuals subscribed to these particularistic theories, for many of the factors were, and still are, closely associated with the dependent condition about which the investigation centers. Failure to incorporate a sufficient number of interacting factors in the studies led to an overemphasis of single factors, attributing to the latter an influence not warranted by the facts. The "heredity-environment" feud illustrates this point.

"Heredity" and "Environment": A False Dichotomy. The particularistic theories alluded to above were for the most part efforts to support the larger theory that behavior can be accounted for by either of two supposedly independent sets of factors. While it is still popular to refer to these forces as "heredity" and "environment," many deem it preferable to use the terms *social heritage*, and *biological heritage*. There has long existed a feeling that one must resort to either of these dichotomous extremes to explain human conduct. The enthusiasm with which the votaries of the respective sides champion their cause is not unlike that manifested by the members of rival colleges during athletic contests. Much of this zeal emanates from academicians and professional men who, it seems, feel emotionally bound to their respective disciplines and professions. This is well exemplified by the contrasting nature of the research and theories of the European and American criminologists. The bulk of the accepted investigators in Europe have been trained in the biological sciences, while those in the United States have, in the main, been social scientists, including psychologists. It is not that the social scientists of Europe have done nothing, but rather that the medical profession has usurped the stage and thereby acquired an audience.³ In the words of one

¹ Quoted by Lindesmith and Levin, "The Lombrosian Myth in Criminology," *American Journal of Sociology*, Mar., 1937, pp. 661-662.

² *Ibid.*, p. 662.

³ See Lindesmith and Levin, *op. cit.*, p. 669; also see comment by Sellin, *American Journal of Sociology*, May, 1937, pp. 897-899.

European writer, "One might venture the assertion that the tendency of European criminology is rather toward the individual, endogenous theory of criminality, while Northern American criminologists are more inclined to see its chief causes in social factors." ⁴

America has not been without a biological emphasis in this field. In 1924 two Chicago men, a jurist and a physician, came to the conclusion that the mental defect that contributes to make criminality is an inherited (biological) defect and is incurable. They add that crime is a symptom of the structural defect of the "lower brain," and that nearly 100 per cent of the criminals are thus affected.⁵ This "new and revolutionary discovery" is still in search of substantiating evidence! The family histories reported in the next chapter will further attest the fact that the biological emphasis has not been neglected entirely in this country.

It appears to be logical to say that those who subscribe to the belief that biological predisposition is rigidly defined will find somewhat of a dilemma facing them in the differing rates of criminality of the two sexes. Either it must be held that the environment of the sexes is markedly different, or that there is a greater predisposition to delinquent behavior in the male germ plasm, or both. If they elect to support the view of the discrepancies in environment, then they are forced to relax the stand of rigidity of such predisposition. If the other alternative is selected, they will be hard pressed to produce any evidence that the tendency to commit crimes is a sex-linked characteristic.

An echo of this professional and academic cleavage is heard in the layman's assertions regarding the causes of atypical behavior. On the other hand there are the lay counterparts of John B. Watson who feels that proper social surroundings can produce almost any desired result in the biological organism. But the number of highly intelligent persons holding that one's destiny is written in his blood is larger than most of us are wont to believe. Whether the lay person's will to accept as true the dictum that "blood will tell" is sponsored by the desire to justify the discrepancies in economic wealth, or to bolster one's ego is of no particular interest to us at this point. Somewhat more pertinent is the question of the divergence of thought among the criminologists of the two continents. It may be true that one can see only that with which he is most familiar, and therefore the physicians and sociologists are predisposed to emphasize biological and social factors, respectively, in their quest for the key to delinquent behavior. Whatever the reason, it is generally true that the physicians have found data from which they have drawn conclusions supporting their contentions, and the sociologists have found data equally satisfying to their claims.

For a case in point let us turn to the psychoses and neuroses that appeared during the war of 1914-1918. From the apparently undifferen-

⁴ Kinberg, *Basic Problems of Criminology* (Copenhagen, 1935), p. 167.

⁵ "Are Criminals Brain-Cripples?" *Literary Digest*, Aug. 9, 1924, pp. 21-22.

tiated ranks of soldiers, certain were selected by these disabilities. Others who seemed to have been much the same as these persons in personality make-up prior to actual engagement in battle came through unscathed mentally. To some the reason for this differentiated response to the ordeals of warfare was patent. Here at last was evidence that certain individuals had been short-changed biologically by their forbears, and in consequence were unable to withstand the trial of fire and lead. The environment in such instances was of the sort that would reveal this innate weakness; undoubtedly, it was reasoned, many persons were possessed of comparable infirmities that would disclose themselves under the appropriate circumstances.

Deductive reasoning is a valuable tool when placed in proper hands, but may lead to gross errors if not employed with discretion. Unfortunately, its fascination is not diminished in accordance with the loss in accuracy resulting from misapplication. In attributing the war psychoses and neuroses to biologically acquired predisposition, this form of reasoning has been clearly misused. This is not to intimate that such predisposition may not be present; all that we can say is that the conclusion to that effect is mere speculation in the light of the supporting evidence. Analysis of the mental aberrations resulting from the desperation bred by war situations by those who held no brief for biological determinism produced evidence contrary to that sketched above.

For them, a review of case histories divulged material showing how the experience of the person in years of personality development had prepared him to withstand the trials of crisis situations, or had prepared him in such a way that he would break under these critical situations. The believers in social determinism see no reason for resorting to the explanation proffered by the biologically minded observers. This is generally true also of those persons whom some have chosen to label interactionists, that is, those who believe that the individual is born with what, to all practical purposes, are undefined impulses that depend upon the social heritage to determine the personality characteristics. They would grant, of course, that the numbers of possible channels of behavior open are finite in number, but assert that the alternatives are sufficiently varied to account for all of the observed divergencies in personality formation. Their stress is placed upon the flexibility of the organic equipment, while the biologically trained adhere to the belief that the biological heritage is quite rigid in its determination of personality attributes.

All Behavior Is "Bio-Social." Because of the danger of reading the single-cause fallacy into the cause-and-effect type of explanation, many careful students of society prefer to speak in terms of the interactive factors that are operative in determining behavior. The multiplicity of factors present in even the simplest of situations is sufficient argument for the abandonment of the quest for the single cause.

Pursuant to this abandonment, A. P. Weiss, the American behaviorist.

coined a fortunate term, *bio-social*. When we say that all behavior is *bio-social*, we mean simply that the biological equipment of the individual, that is, his biological heritage, and the environment to which he has been exposed, that is, his social heritage, are operative in all of the social situations in which he participates. It is through the *interaction* of these two heritages that one's personality is developed.⁴ If one accepts this interpretation of the rise of personality, the time-honored query as to which is more important becomes quite meaningless; both are indispensable to the development of the personality.

In another sense, however, the question remains valid. It may point to the search for the interactive factor in the situation that is so atypical that it precipitates delinquent conduct. It should not be necessary to labor the point here that the importance of each factor embodied in a social situation is always relative, never absolute; that is, now one and then another is prepotent. Bearing this relativity in mind, one may with justification ask whether the social or the biological heritage is of greater importance in determining the delinquency in a particular situation. The relativity of these multiple and complex attributes will be demonstrated in the succeeding pages, which treat of the rôles assumed by them in warping behavior into delinquent patterns.

Much that we are able to observe still remains in a questionable position. We are as yet unable to ascertain whether the relationship of many items in a situation is one of influence or is merely one of association. Since this is the case, it behooves one to avoid dogmatism in these borderline instances if accuracy is not to be forfeited. One should keep in mind, however, that the ardent champions of the particularistic theories, through their enthusiasm and labor, provide their more cautious colleagues with research findings that aid in clarifying the nebulous picture, albeit the interpretation of the latter may diverge widely from that of the former.

Throughout Part II attention will be directed especially to the unorganized criminal, the criminal who has been apprehended. With the exception of the chapter on economic factors in criminality, little effort has been made to deal with the organized type of crime about which the layman and the expert alike are relatively ignorant. The realm of extra-legal "business" typified by the rackets that flourish particularly in urban centers of the United States is vast and largely uncharted for research purposes. Any conclusions that make pretense to adequate coverage of the subject regarding the differentiating characteristics of criminals and non-criminals must, of course, include studies of the persons engaged in this form of crime. The fact that the law-enforcing agents, professional politicians, business men, and so forth, who constitute the directorate of

⁴ The student is referred to the works of Charles H. Cooley, John Dewey, and George Herbert Mead for more extended treatment of this interactionist point of view. Also see Faris, *The Nature of Human Nature* (New York and London, 1937).

these criminal syndicates are generally unknown makes it necessary to restrict investigations, and therefore conclusions, to the offenders who are, from an economic standpoint, less important. Since this is true, researchers attempting to distinguish the criminal from the law-abiding person, for instance, Hooton, should not purport to separate the criminal *per se*; rather they should recognize the fact that their data are drawn from a very highly selected sample of the universe of criminals. The number of reputable business men who skirt the fringes of extralegal conduct also complicates the task of determining what constitutes criminal behavior.⁷

The "business" of crime alluded to in the preceding paragraph will be discussed in the chapter on "Economic Factors," but it should be remembered that a single chapter devoted to this problem cannot be considered at all adequate. The ramifications of it lead one into the fields of political science, economics, jurisprudence, etc. The most that can be done in the chapter is to discuss some of the sociological implications of this form of crime.

To those who assert that a text devoted mainly to the problems presented by the operations of the "traditional criminal" is largely misplaced effort, we reply that the homes broken by these operations, the millions of the taxpayers' dollars spent in the futile attempt to "reform" the convicted by means that have not been very efficacious, and the warped personalities that are the end products of this process of imprisonment and humiliation, and so on, are not inconsequential, and well warrant the treatment accorded them. We cannot agree with Barnes that such treatment is anachronistic.⁸

The form of criminal behavior referred to by Professor Barnes is, as he agrees, largely the extralegal counterpart of sharp business practices widely countenanced and curbed only by a vague ethical force. The differences between these two phenomena are matters of degree, and their eradication requires a drastic change in the socio-economic-political institutions, as Barnes himself says.⁹

The study and advocacy of such far-reaching changes are worthy of greater space and attention than the restricting confines of the discipline of criminology can afford. We include for more extensive treatment in this text those factors that are more amenable to adjustment measures available within the socio-economic order that is likely to obtain in the immediate future. It has become axiomatic in the field of social pathology that one must think in terms of small gains. There is reason to believe that the problems faced in this book will be confronting the members of whatever social order may replace the present one. It is difficult to conceive of a society wherein there would be no social deviates.

⁷ See Sutherland, "White Collar Criminality," *American Sociological Review*, Feb., 1940, pp. 1-12.

⁸ See Barnes, *Society in Transition* (New York, 1939), pp. 675-715.

⁹ *Ibid.*, p. 707. See also Barnes and Teeters, *New Horizons in Criminology* (New York, 1943), Ch. 2.

Finally a word should be said concerning the use of the terms *cause* and *factors* in discussing the making of the criminal. The former term has been used loosely, to the damage of criminology. The usage has grown out of the belief that human conduct is the result of certain activating influences. That is true, but as used it has often been equivalent to mean that a condition associated with crime is the *cause* of crime. However, modern science has become wary of the use of the term *cause*. In social science one should be careful in the use of that term. Social life is so complex that it is extremely difficult to isolate a factor and say that it is the cause. About all we can say is that such and such factors are *associated* with delinquency. If a certain condition is associated with delinquency, why can we not say that it is a *cause* of delinquency? For a number of reasons: (1) Because the association may occur by chance; whether or not the occurrence is by chance can now be ascertained by statistical methods. (2) But there is another reason. Often the factor that can be measured as to association may not be the cause at all, but may itself be the product of some factor we have not discovered or cannot isolate and quantify. Thus, we know that low-paid occupations characterize prisoners, but those occupations may not have directly caused the behavior; they may have only incited emotions and resolves that really caused the crime. The latter are difficult to discover and measure. (3) A third reason is that often the factor associated with delinquency may be the result of an undiscovered factor that really accounts for the criminal behavior. Hence we are slow to assert that because a condition is associated with crime, it is the cause of crime.

The same is true of the term *factor*. We do not know enough yet about just how external circumstances or internal conditions determine behavior to be certain that a given condition found associated with criminal conduct activated the human organism to criminal acts. Therefore, what we mean by a factor in the making of the criminal is any condition that seems to recur significantly more frequently in the experience of criminals than in the history of non-criminals. That condition may be a physical or mental condition of the individual, such as a physical deformity, or weakness, or glandular peculiarity, or such as mental deficiency, dementia, epilepsy, and so forth. Or it may be home conditions, experience in school, or neighborhood. Until further analysis has been made of the various conditions found associated with criminal conduct, we cannot be sure that those discussed in the following chapters are really stimuli to criminality. Still less can we at the present time say what weight each of the factors has in criminal behavior.¹⁰

¹⁰ For a discussion of causation see Morris, "Crime Causation," *Federal Probation*, July-Sept., 1943, p. 17. Morris follows MacIver's *Social Causation*. For a history of the development of the study of causation in criminal behavior in the United States see Fink, *Causes of Crime* (Philadelphia, 1938), Ch. VI. For a brief description of present trends in criminological research in the United States see Shalloo, "Trends in Criminological Research," *Federal Probation*, Oct.-Dec., 1942, p. 21.

Chapter V

FACTORS IN THE PHYSICAL ENVIRONMENT

Historians and sociologists have noted the influence of physical nature upon the development of society. Montesquieu and von Treitschke have thought that climate and the topography of the country affect a people directly, attributing the difference in characteristics of people in the different parts of the world to these external factors. Ellsworth Huntington, long a proponent of the geographic school, recently asserted that large proportions of persons born in winter will have low I.Q.'s, will become criminals, or suffer from insanity or tuberculosis.¹ Buckle, Spencer, Semple, Giddings, and others have seen that the problem is not so simple, but that the physical environment usually acts indirectly through its effects upon the density of population, economic development, and cultural institutions.²

The sociologist or social-psychologist who would deny the physical environment as one of many factors influencing the growth of personality is a rarity indeed. Everywhere about us one recognizes the rôle of the physical world as an agent limiting the behavior of mankind. We know that the density of population depends partly upon the physical topography of the country and that such aggregations of people as one finds in Chicago and New York would be impossible in certain regions. Similarly, we are cognizant of the fact that crime rates are higher in these congested areas.

Moreover, the fertility of the soil and the richness of other natural resources determine to some extent the economic welfare of society, and, as we shall see in the study of the economic factors, economic conditions have a rather direct bearing on the making of the criminal.

¹ *Season of Birth* (New York, 1938).

² The European scholars have devoted more attention to the relation of the physical environment to crime than have the Americans. Many of the early studies were really ecological in nature, as pointed out by Levin and Lindesmith in their "English Ecology and Criminology of the Past Century," *Journal of Criminal Law and Criminology*, Mar.-Apr., 1937. A few references to European scholars who tried to connect factors of the physical environment with crime are: Faure, "Influence des taches solaires sur les suicides, les crimes et les accidents," *Gazette des Hôpitaux*, Vol. 104 (Aug. 19, 1931), pp. 1250-1253; Gleibach, "The Kriminalität der Jahreswende," *Schweizerische Zeitschrift für Strafrecht*, Vol. 43 (1929), pp. 113-130; Mezger, "Anlage und Umwelt als Verbrechensursache," *Monatschrift für Kriminalpsychologie und Strafrechtsreform*, Vol. 19 (Mar., 1929), pp. 141-147.

The sociologist is careful, however, not to forget that the correlation between these physical factors and certain forms of behavior is usually small and that the importance of the factors is a relative one. Nevertheless, he is unwilling completely to ignore those studies that raise the question as to whether climate, seasons, humidity, and other geographical and climatic conditions may not have a direct effect upon the human organism by disturbing its balance or by generating certain irritabilities and states of mind that have direct issue in criminal conduct.

Since only a few subscribe to the belief that physical environment has such an influence on the behavior of criminals, the treatment of the subject here will be brief. While these factors may be more significant in affecting behavior than we suspect at present, the evidence available does not indicate that we are warranted in spending much time in discussing the work in this highly speculative field. There is, on the other hand, evidence that the supporters of this position have been misled by superficial observations.

Geology and Crime. A number of the Italian, and some of the French and German, criminologists have endeavored to indicate correspondences between different geological features and the crime rate. It must be confessed, however, that these attempts have not been very successful. Lombroso, for example, studied the influence of the geological differences upon political crimes and crimes against the person in different parts of France. These differences were so slight as to be negligible.³

Geography and Crime. An effort has been made to ascertain whether there is any relationship between the general physical conformation of the country and criminality, especially crimes against persons. Lombroso believed that he had discovered that the minimum occurred in the level parts of France, a slightly greater portion in the hilly parts, and the maximum amount in the mountainous districts. On the other hand, he believed that he found rape more common in the level country than in the mountains and hills. The same he believed to be true for crimes against property.

He explains these findings by saying that the mountains offer more opportunity for ambushes and breed a more active race. However, his explanation for the reverse situation as to rape and crimes against property is that in the level regions you have the larger aggregations of population where these crimes are always found in greater abundance.⁴

Lombroso argues that through its effect upon the health of the people, the physical environment produces criminality. He cites, for example, that the districts of Italy most subject to malaria show a maximum number of crimes against property, while there seems to be no connection in the statistics between malaria and homicide in either Italy or France. On the other hand, the districts of Italy and France where goiter prevails and

³ Lombroso, *Crime, Its Causes and Remedies* (Boston, 1912), p. 17.

⁴ *Ibid.*, pp. 17, 18.

the resulting cretinism is indigenous, and in which the soil has great influence on the health and intelligence of the inhabitants, have less than the average number of homicides, thefts, and with the exception of a few districts, sexual offenses.⁵ It is probable that these factors are indirect rather than direct; they affect the natural resources and the aggregation of population.

CLIMATE AND CRIMINALITY

It has been observed that crime against the person rises to high rates in countries with a warm climate, while crimes against property have a low rate. Numerous efforts have been made to explain this fact on the basis of the irritating effect of heat upon the human organism. It has been claimed that excessive heat stimulates the emotions and tends to increase irritability. Therefore the assumption is that in the warm climates you have a more excitable, irritable population than in temperate or cooler countries. This hypothesis, however, has not been verified. While the people of some hot climates are easily excited, others are rather sluggish and phlegmatic. Careful research has not confirmed this climatic influence. For example, in Germany the crime rates vary from east to west rather than north to south, being higher in the east than in the west.⁶

Lombroso attempted to show that southern Italy had a higher criminal rate than northern Italy. His figures were based upon indictments for crime, the number of homicides, highway robberies with homicide, and aggravated theft. He said that simple and aggravated homicide had a higher rate in Italy and other southern countries than in northern European countries such as England, Denmark, and Germany. The same contrast between northern and southern Europe held concerning political revolutions.⁷ The events in Europe since 1914 have not given much support to his theories.

THE SEASONS AND CRIMINALITY

Studies in every country indicate that crimes against the person are more numerous in summer than in winter, while crimes against property are more numerous in winter than in summer. To Guerry and Lombroso this proved the influence of heat upon criminality. Lombroso cites many figures to prove this contention. He tried to strengthen his theory of the relation of heat to crimes against person and of cold to crimes against property by reference to Ferri's study of crime in its relation to temperature, based upon French statistics from 1825 to 1878, and the criminal calendars of Lacassagne, Chaussinaud, and Maury, who charted the various kinds of crimes for the different months of the year. These calendars showed that infanticide held first place in the months of January, Feb-

⁵ *Ibid.*, pp. 18, 19.

⁶ Mayo-Smith, *Statistics and Sociology* (New York, 1904), pp. 270, 271.

⁷ Lombroso, *op. cit.*, pp. 13-16.

ruary, March, and April. Homicides and assaults reached their maximum in July. Patricides were committed most frequently in January and October. Rapes upon children occurred most frequently in May, July, and August, with the minimum in December. Rapes upon adults reached their maximum in June and minimum in November. Crimes against property showed less wide variations, though they seemed to be most numerous in December and January, in the cold season.⁸

It is a question whether these climatic influences directly affect irritability and cause criminality. In summer people get out of the house more, contacts are more numerous, the opportunities for disagreements are greater, and consequently there is greater probability of personal violence than in the winter. Moreover, in European countries, where the women work in the fields, the opportunities for violence are very much greater in the summer than in the winter. Nevertheless, there is some evidence that heat exerts an influence upon the action of the nervous organization. Its relationship to aberrant behavior still remains undetermined.

On the other hand, cold indirectly produces crimes against property by reason of the fact that in winter economic need is greater, since seasonal occupations are closed down and therefore money is scarce with which to buy the necessities of life. Temptations to steal are consequently greater than in the summer.

THE WEATHER AND CRIMINALITY

What has already been said with reference to climates and seasons has some bearing upon the problem of the weather's relation to criminality. The most important study of the relation of the weather to conduct has been made by Dexter, although some European authors have given attention to the matter, among them Corre and Lombroso.

Dexter, in his study of the relation of weather to certain crimes in New York City, and another study of the same relationships in Denver, reports the following findings:

1. The number of arrests increased quite regularly with *temperature*. Therefore, temperature, more than any other condition, affects the emotional states and leads to fighting. The influence of temperature upon females is greater than upon males.

2. As the *barometer* fell, the number of arrests rose. His explanation of this is that since a low barometer precedes storms, the feeling of an approaching storm arouses in some people the emotional state that results in violence.

3. Large numbers of assaults are to be found correlated with low *humidity* and a small number with high humidity. He explains this on the basis that high humidity of the atmosphere is both vitally and emotionally depressing.

⁸ See also Mayo-Smith, *op. cit.*, pp. 271, 272. See Tarde's criticism of these theories in his *Penal Philosophy* (Boston, 1912), pp. 297-318; Sayers and Davenport, "Review of the Literature on the Physiological Effects of Abnormal Temperatures and Humidities," *U.S. Public Health Reports*, Apr. 8, 1927, pp. 933-996; "Der Einfluss von Wirtschaftslage, Alkohol und Jahreszeit auf die Kriminalität," *Bericht der Zentralstelle für Gefangenenfürsorgewesen der Provinz Brandenburg*, 1930, pp. 3-89.

4. The days when the *winds* are mild, that is, between 150 and 200 miles per day, are characterized by a high pugnacity rate. During days of calm and days of high wind, the number of arrests were less. He makes no explanation of his findings except to say that when the weather is calm an excess of carbon dioxide in the atmosphere may lessen the vitality.

5. He studied the number of arrests on *fair days and cloudy days*, with the result that he found that cloudy days are freest from personal encounters that attract the attention of the police. These facts he explains by the hypothesis that the clear days are the vitalizing ones.

His hypothesis of the effect of weather upon criminality is that these different meteorological conditions affect the bodily functions in different ways. Mild temperature, mild winds, fair days, and low humidity are of such a character as to accelerate the vital process of oxidation. He says: "Those meteorological conditions which are productive of misconduct in a broad sense of the word are also productive of health, and mental alertness: as a corollary misconduct is the result of an excess of reserve energy not directed to some useful purpose."⁹ Such statements as this tell us little.

CONCLUSIONS

While it is quite possible that climate, season, and geological conditions have some effect directly upon the human organism and thus determine to some extent whether the conduct shall be socially good or bad, the influence of the physical environment for the most part is indirect. These factors affect the economic conditions that determine whether the standard of living shall be high or low, whether there shall be great wealth or great poverty. They also determine whether the country is able to support a large population and whether this population is gathered together in large cities or distributed somewhat equally in smaller aggregations over the land. They have some effect upon the contacts of human beings with each other, the temptations that are presented to weak natures with disastrous social results, the kind of education possible to the young, and the kind of cultural and social organization that develops. In these ways the external factors have an effect in the amount of criminality, kinds of criminality, and to a certain degree the social reactions to crime. Whether geographic conditions, the seasons, and the weather have a direct effect upon human conduct we cannot say with assurance until further studies have been made.

That the physical environment operates indirectly in the making of the criminal suggests the course society should take in treating the criminal and in preventing crime. If the seasons are responsible for the unemployment at a certain period of the year that provides the economic situation favorable to theft, then we know that every effort of society to overcome seasonal employment with some social measure is a preventive. If the warm weather of the summer forces people out of their homes into the streets, parks, and open spaces of the country, where contacts are multi-

⁹ Dexter, *Weather Influences* (New York, 1904), p. 266.

plied and where opportunities for acts of violence are increased, we cannot modify the heat of summer, but we can provide safeguards against the temptations to crime through supervision of outdoor activities. Hence, the indirect influences of the physical environment on crime must be met by certain social measures that will operate in the social field to offset the effects of opportunities for crime and irritating contacts.

QUESTIONS AND EXERCISES

1. Compare the local temperatures to be obtained from your local weather bureau with the record of arrests to be got from your local police office or court calendar.
2. Compare the record of arrests for different crimes with the season of the year in which the crime was committed.
3. Do you know of any facts with respect to the increased irritability of people in hospitals for the insane on the approach of a storm?
4. When you visit a prison ask the warden whether he has noticed any connection between weather conditions and the conduct of his prisoners.
5. Estimate the importance of the physical environment for crime as compared with other factors, such as the economic and the social.

Chapter VI

PHYSIOLOGICAL AND ANATOMICAL CHARACTERISTICS OF THE CRIMINAL

The belief that unusual physical characteristics often mark the socially variant individual is at least as old as Homer. He thus describes the detestable Thersites:

Thersites only clamour'd in the throng,
Loquacious, loud and turbulent of tongue;
Awed by no shame, by no respect controll'd,
In scandal busy, in reproaches bold:
In witty malice studious to defame,
Scorn all his joy, and laughter all his aim:—
But chief he gloried with licentious style
To lash the great, and monarchs to revile.
His figure such as might his soul proclaim;
One eye was blinking, and one leg was lame;
His mountain shoulders half his breast o'erspread,
Thin hairs bestrew'd his long misshapen head.
Spleen to mankind his envious heart possessed,
And much he hated all, but most the best:
Ulysses or Achilles still his theme;
But royal scandal his delight supreme,
Long had he lived the scorn of every Greek,
Vexed when he spoke, yet still they heard him speak.
Sharp was his voice; which in the shrillest tone,
Thus with injurious taunts attack'd the throne.

—Homer, *The Iliad*, Pope's Translation

Evidence of the persistence of this belief is found in Shakespeare's lines,

Yond Cassius has a lean and hungry look;
... such men are dangerous.

The great poet's conception of the manner in which body characteristics affect the personality in fostering antisocial behavior is seen in Gloucester's words:

But I, that am not shaped for sportive tricks,
Nor made to court an amorous looking-glass;
I, that am rudely stamp'd, and want love's majesty
To strut before a wanton ambling nymph:
I, that am curtail'd of this fair proportion,
Cheated of feature by dissembling nature,

Deform'd, unfinished, sent before my time
Into this breathing world, scarce half made up,
And that so lamely and unfashionable
That dogs bark at me as I halt by them:
Why, I, in this weak piping time of peace,
Have no delight to pass away the time,
Unless to spy my shadow in the sun
And descant on mine own deformity:
And therefore, since I cannot prove a lover,
To entertain these fair well-spoken days,
I am determined to prove a villain
And hate the idle pleasures of these days.
Plots have I laid, inductions dangerous,
By drunken prophecies, libels and dreams,
To set my brother Clarence and the king
In deadly hate the one against the other:
And if King Edward be as true and just
As I am subtle, false and treacherous,
This day should Clarence closely be mew'd up,
About a prophecy, which says that G
Of Edward's heirs the murderer shall be.
Dive, thought, down to my soul: here Clarence comes.

—*King Richard the Third*, Act I, Scene 1.

As Ellis has pointed out, from classical antiquity down to the man in the street to-day the physiognomy of an individual has provided observers with signs of his personality, if not of his character. Popular beliefs as to the relation of some of these characteristic physical features to conduct are embedded in proverbs and folk beliefs, such as the old French proverb, "Salute from afar the beardless man and the bearded woman," or "Beware of the man who cannot look you in the eye." Socrates, examined by a Greek physiognomist, who said that Socrates' face showed that he was brutal, sensuous, and inclined to drunkenness, admitted that such was his natural disposition but that he had trained himself to overcome these tendencies.¹

But the physiognomists aside, it is certain that Lombroso, the founder of the Italian School of criminology, moved in an atmosphere impregnated with the notion that the physical features of the insane and of the criminals were different from those of the general run of people. Gall had popularized phrenology, the doctrine that the functions of the brain are localized in different parts and that the varying development of the brain could be observed from the "bumps," or differing development of the skull. Moreover, Broca, who founded the Anthropological Society of Paris in 1859, had noted the peculiar shape and structure of the skulls and brains of criminals. Wilson in 1869 had read a paper before the British Association on "The Moral Imbecility of Criminals as Exemplified by Cranial Measurements."² Lombroso himself in his introduction to

¹ Ellis, *The Criminal* (New York, 1910), p. 27.

² *Ibid.*, p. 37.

his daughter's book *Lombroso's Criminal Man*,³ refers to his debt to Wilson. These physical features were ascribed by Lombroso, in common with many of his predecessors, in part to degeneracy, or as he put it, to atavism, or a throw-back genetically to a lower form of biological development. In this Lombroso shows himself a disciple of Darwinian evolutionism. These physical features gave him the basis of his belief that these peculiar characteristics somehow explained the criminality of those individuals who were marked by them. Even in Lombroso's thinking, however, these characteristics did not stand alone; they were the signs of hereditary defects that determined also the mental and moral characteristics of the criminal. He estimated that only about one-third of the criminals show these anatomical characteristics. Lombroso was a psychiatrist as well as a criminal anthropologist.

The Italian School of Criminology gave to the belief that physical characteristics affected one's behavior a support that was interpreted by many as scientific sanction.⁴ For this reason, and sundry others, the man in the street still feels competent to recognize both desirable and undesirable personality traits by the physical characteristics of the individual in question. From superficial observations have come widespread myths concerning the relationship of body and personality. But it has been a popular pastime of scientists to mix indiscriminately the photographs of college professors, murderers, professional men, rapists, and so on, and then to gloat over the inability of the subject correctly to differentiate the criminal from the law-abiding individuals. Studies to date have not enabled the scientist to separate completely fact and fable in this fascinating line of endeavor. Let us briefly review here some of the more important efforts to advance our knowledge as to the relationship between the physical characteristics of the individual and his misbehavior.

PHYSICAL ABNORMALITIES

Physical Stigmata and Crime. In discussing the physical factors in delinquency, criminology has passed beyond the emphasis given by Lombroso. He believed that the stigmata of degeneracy were signs of the criminal nature of the individual. He went to great pains to describe these physical characteristics of what he called the born criminal. The

³ Ferrero, *Lombroso's Criminal Man* (New York, 1911), p. xiii.

⁴ Two of our younger American criminologists have refuted the theory current among some Americans that before Lombroso there was no "scientific" criminology. Their quarrel is with those who define "scientific" as related to the anthropological and biological peculiarities of criminals, and with those who trace the origin of some of our modern methods and studying the criminal back to Lombroso and his school. Lindsmith and Levin, "The Lombrosian Myth in Criminology," *The American Journal of Sociology*, Vol. XLII (Mar., 1937), p. 653. For a history of the development of criminological theory in the United States, see Fink, *Causes of Crime: Biological Theories in the United States* (Philadelphia, 1938). Fink shows that theories based upon phrenology arose early in this country due to the influence of Gall and Spurzheim on the American Caldwell.

variation of the head in size and shape from the type common to the race and region from which the criminals come; asymmetry of the face; excessive dimensions of the jaw and cheek-bones; eye defects and peculiarities; the ear often of unusual size, or occasionally of very small size, or standing out from the head as do those of the chimpanzee; the nose twisted, up-turned, or flattened in thieves, or aquiline or beak-like in murderers, or with a tip rising like a peak from swollen nostrils; the lips fleshy, swollen, and protruding; pouches in the cheeks like those of some animals; peculiarities of the palate, such as a large central ridge, a series of cavities and protuberances such as are found in some reptiles, and cleft palate; abnormal dentition; the chin receding, or excessively long, or short and flat as in apes; abundance, variety, and precocity of wrinkles; anomalies of the hair, marked by characteristics of the hair of the opposite sex; certain defects of the thorax, such as too many or too few ribs, supernumerary nipples; an inversion of sex characters in the pelvic organs; excessive length of arms; supernumerary fingers and toes; and imbalance of the hemispheres of the brain are among the most important physical abnormalities cited by Lombroso as characteristic of the criminal.⁵

While criminals often have such physical abnormalities, recent studies have shown that the same abnormalities are to be found in those not criminal and that such abnormalities do not have the importance in producing crime that was attributed to them by Lombroso and his school.⁶ He had no adequate basis for a comparison with the general population of the same economic and social class and of the same general level of intelligence.

Moreover, Lombroso's explanation of criminality on the basis of atavism, which these abnormalities were made to prove, was a philosophical deduction the facts do not warrant. His theory was that men commit crime because they represent in their physical and mental make-up a type of being that ontologically belongs to an earlier stage of evolution and they therefore commit acts that were natural to such a lower stage of social development. Modern biology and sociology have given pause to such rash and easy generalization.

Abnormal Physical Development. In the first decade of this century studies by Goring in England and by Healy and Bronner in this country called attention to the association of *physical overdevelopment* with anti-social conduct—Goring in the case of adult male criminals, especially those guilty of crimes of violence, and Healy and Bronner in their study of juvenile delinquents.

Healy and Bronner found that overdevelopment may be an important factor in the making of a young delinquent. They found that from 50 to 64 per cent of 2,000 juvenile recidivists in Chicago, and from 72 to 73 per cent of the females, were overdeveloped physically. An Illinois study

⁵ Ferrero, *op. cit.*, pp. 10-24.

⁶ See Aschaffenburg, *Crime and Its Repression* (Boston, 1913), pp. 168-178.

brings this fact into the open. The average of the inmates of two institutions over a period of seven years was greater both in weight and height than the average of the first million recruits of the Army in World War I.⁷

A study reported in 1938 showed that the average height and weight of 106 girls admitted to a state institution for delinquent girls were sixty-three and one-half inches, and 138 pounds, respectively. This is, of course, normal or above for girls of this age, the mean age being fifteen and one-half years. Except for those resulting from venereal infection, abnormal physical conditions were rare.⁸

In Europe a whole school has developed emphasizing the anatomical characteristics of delinquents. Although influenced by Lombroso, it represents an entirely different approach. It is an attempt to analyze body forms and character into types and to correlate the one with the other. It is represented by E. Kretschmer in his *Physique and Character*⁹ and his *Medizinische Psychologie*¹⁰ and by many other Germans and Austrians.¹¹ These attempts to identify certain physical types of body build with types of behavior have not been very successful. American criminologists have not used these methods to any extent, probably because they doubt that the Europeans have made out a clear case.

Until quite recently the most complete study of the anatomical characteristics of the adult offender was that of Charles Goring. He published *The English Convict: A Statistical Study* in 1913, the basis for which was a protracted investigation of the bodily characteristics of 3,000 English convicts. This research led Goring to conclude that these convicts were, as a whole, physically inferior to the general population of the same age. With the exception of those convicted of fraud, they were shorter and lighter than the non-criminals and than those convicted of violence to the person, the latter offenders being stronger and having greater constitutional soundness than the members of the law-abiding community. Thieves and burglars, however, who constituted 90 per cent of the criminals, and the incendiaries were not only inferior in stature and weight but were puny relatively not only to the other classes of criminals, but also to the general population.

Goring's explanation of these observations is not that of Lombroso's "criminal type," but rather that these bodily inferiorities "are selective

⁷ Tulchin, *Intelligence and Crime* (Chicago, 1939), pp. 156-157. See also Mathews, "A Survey of 341 Delinquent Girls in California," *Journal of Delinquency*, Vol. VIII.

⁸ Jameson, "Psychological Factors Contributing to the Delinquency of Girls," *Journal of Juvenile Research*, Vol. XXII, Jan., 1938, p. 29.

⁹ (London, 1925).

¹⁰ (Leipzig, 1930).

¹¹ Among them, Lenz, *Grundriss der Kriminalbiologie*; Ewald, *Die Körperliche Grundlagen der Characters* (Leipzig, 1928); Jaensch, *Grundzüge einer Physiologie und Klinik der psychophysischen Persönlichkeit* (Berlin, 1926). For an attempt to reconcile the various typologies of this school, see Willemsse, *Constitution-Types in Delinquency* (New York and London, 1932).

factors, determining to some extent conviction for crime." He says that the physically inferior are selected for crime by their occupations and their struggle with poverty. Moreover, he believes that physically superior beings are less prone to commit crimes than the inferior because of more amiable dispositions.¹²

Recently an American physical anthropologist, Dr. Hooton of Harvard, has finished and published in part the results of a long study of the anthropology of American criminals. Dr. Hooton states in his preface that the object of his investigation was to ascertain whether criminals differ physically from law-abiding citizens of the same race, nationality, and economic status, and if so, why.¹³ The ambitious survey undertaken by Hooton himself selects its data from 17,077 anthropometric records, this number including 3,203 civilians measured for comparative purposes. The samples were drawn from nine states. The work will eventually be published in three massive monographs, the first of which is *The Native White Criminal of Native Parentage*.

It is impossible within the limits of our space to present in any detail the findings of Hooton's study. Two of his general conclusions are: (1) the criminals who commit different types of offense are significantly different in a number of physical characteristics; and (2) "the old American criminals"¹⁴ as a whole in his sample show eleven significant morphological differences from his non-prisoner control group. These eleven differences are stated by Hooton as follows:¹⁵

- (1) Tattooing is commoner among criminals than among civilians.
- (2) Criminals probably have thinner beard and body hair and thicker head hair.
- (3) Criminals have more straight hair and less curved hair.
- (4) Criminals have more red-brown hair and less gray and white hair.
- (5) Dark eyes and blue eyes are deficient in criminals, and blue-gray and mixed eyes are in excess. Homogeneous irides are rare in criminals, and zoned and speckled irides are excessively present. Eyefolds are commoner in criminals and thin eyebrows occur more frequently.
- (6) Low and sloping foreheads are excessively present among criminals.
- (7) High narrow nasal roots, high nasal bridges, undulating nasal profiles, nasal septa inclined upward and deflected laterally, extreme variations in thickness of the nasal tip, are more frequent in criminals than in civilians.
- (8) Thin lips and compressed jaw angles are commoner in criminals.
- (9) Marked overbites are rarer in criminals than in civilians.
- (10) The ear of the criminal is more likely to have a slightly rolled helix and a perceptible Darwin's point than is that of the civilian. More extreme

¹² Goring, *The English Convict: A Statistical Study* (London, 1913), pp. 196-197.

¹³ Hooton, *The American Criminal: An Anthropological Study* (Cambridge, Mass., 1939). Professor Hooton has announced two more volumes. For a popular presentation of the results of the entire study see his *Crime and the Man* (Cambridge, Mass., 1939).

¹⁴ *The American Criminal*, p. 301. By "old American criminals" Hooton means the native white criminal of native parentage.

¹⁵ *Ibid.*, p. 301.

variations of ear protrusion are found in criminals than in civilians. The criminal ear tends to be small.

- (11) Long, thin necks and sloping shoulders are in excess among criminals.

Hooton is careful not to ascribe to these bodily differences direct causative potency. He indicates that they operate indirectly through the selection by economic and social factors of those with these bodily peculiarities for education, occupation, and other social positions that provide the opportunity for crime or the provocation to crime. He concludes that his study shows that criminals, no matter what their offense, are organically inferior to non-criminals, and that crime is the result of the play of environment upon low-grade human organisms. These inferior human beings may be the product of inheritance, or of an environment unfavorable to the development of a physique characteristic of the non-criminal population. There is no doubt in his mind that the anthropologically inferior members of the species are more subject to antisocial influences than the superior. He also believes that his study confirms the findings of other students, for instance, Goring, that particular physical characteristics are associated with specific types of offense—tall, thin men tend to murder and rob; tall, heavy men to kill and to commit forgery and fraud; undersized thin men to steal, and to commit burglary; and short heavy persons to assault, to rape, and to commit other sex crimes; while men of mediocre physique tend to offend without a particular trend towards any specific form of crime.¹⁶

How Physical Characteristics of the Individual Affect Criminality. One of the many ways in which the physical equipment of an individual may affect his development is by placing limitations upon him. To be sure, the large, clumsy person is not apt to engage successfully in occupations that demand speed and dexterity. Thus, the selection of criminals on this basis need not lead one to conclude that there is a predisposing tendency to criminality inherent in certain body forms. Nor should one exhibit any surprise to find that those charged with assault are superior beings, physically. This does not mean that the smaller individual might not desire to employ this technique, were he able to do so. Little more need be said concerning this natural division of labor in the ranks of those who operate without the law.

¹⁶ Hooton, *Crime and the Man*, p. 376. Whether this monumental study will stand up under criticism remains to be seen. One wishes that the civilian samples with which he compared the prisoners had been larger in number and more representative of the civilian population and that certain other statistical tests had been applied to the material. For criticisms see the following reviews: McCormick in *American Sociological Review*, Vol. V, No. 2 (Apr., 1940), pp. 253-254; Ross in *American Journal of Sociology*, Vol. XLV, No. 3 (Nov., 1939), pp. 477-480; Sutherland in *Journal of Criminal Law and Criminology*, Vol. XXIX, No. 6, pp. 911-914.

A recent study of twenty-two murderers in Sing Sing shows that these men had no physical characteristics different from the whole prison population at that particular time. Banay, "A Study of Twenty-two Men Convicted of Murder in the First Degree," *Journal of Criminal Law and Criminology*, Vol. XXXIV, July-Aug., 1943, p. 106.

Certain of the physical characteristics, however, are not so easily explained as are the grosser anatomical differences. Overdevelopment and underdevelopment alike have been recognized as significant factors in the genesis of delinquent behavior. The average criminal is, according to research in that field, inferior in size to the non-criminal population and also is more prone to be ill. Numerous other characteristics have been singled out by investigators as being significantly more numerous in the criminal population than in the community at large.¹⁷

None of the studies to date has provided satisfactory controls in the non-criminal population. For example, since the proportion of the population that is classified as criminal is economically subrepresentative of the entire populace, it is grossly misleading to compare these two groups. There are many less obvious corrections that must be made if research in this field is to yield tenable results.

If the theories which have been subscribed to by the more careful students of social psychology are to be of value in this instance, they will be so as aids in interpreting the data made available by the investigations of the physical equipment of the law breaker. We of necessity resort to deductive logic in this quest for elucidation of causative factors, a process that still remains reputable despite the popular insistence upon the exclusive use of inductive methods.

Thus the physical characteristics of the person become important factors in contributing to asocial behavior only as their definition by the individual and by the environing society makes them obstacles to the development of a normal personality. There may be nothing compulsive about any biological trait, regardless of the incidence of this trait in the populace. While there may be a statistical probability that persons possessing certain physical abnormalities will become ill adjusted to a particular environment, one must guard against transferring this probability into universal terms.

In our particular social order there is a probability that physical inferiority may operate to produce criminals through its effect on men's ability to secure a living by manual labor. The occupational statistics of criminals seem to support the supposition that those occupations that require little intellectual capacity or training furnish more than their proportion of the criminals. Moreover, it is frequently the case that physical inferiority manifested in some disability or chronic illness starts the vicious circle of poverty, hopelessness, irritability, and crime. The

¹⁷ The student is referred to Reckless, *Criminal Behavior* (New York, 1940), pp. 182-201, for a good secondary source for material on the emphasis on biological factors in causation of crime. Also see Monachesi, "Trends in Criminological Research in Italy," *American Sociological Review*, Vol. I; Kinberg, *Basic Problems in Criminology* (Copenhagen, 1935); and Mohr and Gundlach, "A Further Study of the Relation between Physique and Performance in Criminals," *Journal of Abnormal and Social Psychology*, Vol. XXIV; Sleyster, "The Physical Basis of Crime as Observed by a Prison Physician," *Physical Basis of Crime, A Symposium* (Easton, Pa., 1914); Banay, "Physical Disfigurement as a Factor in Delinquency and Crime," *Federal Probation*, Jan.-Mar., 1943, p. 20.

case of Stasia Andrew's father, cited in Chapter XI, illustrates the possibilities of such a factor.¹⁸

Physical overdevelopment of the young females has been frequently observed by judges. It has been said that a girl's sex delinquency often is based on physical overdevelopment, perhaps by directly causing her attention to be drawn to sex life, as well as leading her to be attractive to the opposite sex.¹⁹ We would suspect that the second suggestion, that is, that the girl would become the object of sexual attention, would be the principal factor operating in the delinquency.

Oversize in both sexes tends to make the child conspicuous among his or her playmates and sets the stage for abnormal conduct. His rôle in the play group is a difficult one, and he may be forced into a situation where compensation for the disability of his size may take form in an undesirable manner. The pattern of behavior may not be unlike that exhibited by the diminutive or deformed person, whose physical abnormality precludes in certain instances the development of a normal personality. However, one must not forget that there is no necessary sequence between these physical variations and aberrant behavior. As indicated in the subsequent chapter, it is only when a certain situation obtains that these factors become significant in the making of the delinquent.

The two cases that are briefed below are illustrative of those in which the factor of overdevelopment is operative.

Such a case was Winthrop Standen, Jr., aged fifteen years, eight months. He came from New England ancestry on both sides. He was brought to the Judge Baker Foundation by his parents for advice, since to them he presented a puzzle they could not understand. He was the only member of all their kindred who had shown any lack of high standards of conduct. For two years Winthrop had given them a great deal of anxiety through his misbehavior at school and because of repeated and serious dishonesty. Recently he had been in court for burglary with a companion, and, while still on probation for this deed, was again arrested for breaking into a garage and driving away with an automobile. There had been many other instances of his stealing and of taking automobiles. The boy's indifferent attitude toward his conduct, however, was the disturbing thing to his parents. So far as the families on both sides were concerned there was no evidence of anything but good citizenship.

Winthrop's developmental history showed no peculiarities that would throw light upon the problem. His home was a sensible one with plenty, but no luxury, and an atmosphere of harmony and helpfulness. There were four sisters younger than Winthrop.

As to his associates, Winthrop found desirable friends among the Boy Scouts and other boys in his neighborhood. However, he formed a very portentous comradeship with a boy somewhat older than himself who had been a "notorious scamp" and who had avoided punishment because of the political influence of his family. Through this boy Winthrop formed the casual acquaintance of an undesirable crowd of older boys. His association with girls had been normal and wholesome.

¹⁸ See pp. 165-167.

¹⁹ Healy and Bronner, "Youthful Offenders," *The American Journal of Sociology*, Vol. XXIII, July, 1916, pp. 44-45.

Winthrop's personal habits had been very wholesome. The only two keen interests he had displayed were in his grades and in mechanical things. At the age of eight he could name and put together all the parts of an automobile. While he had had some minor interests such as sports, Boy Scouts, reading boys' books, church affairs, and the activities of a social club, the only lasting interest he had shown was in mechanics. In school he showed a fair amount of interest until he entered high school. When he entered high school at the age of thirteen in the town where he then lived, truancy began and he withdrew. He had not liked the school and had failed to pass for three successive years. It is to be noticed, however, that in the high school his courses consisted entirely of languages and mathematics, none of them appealing to his interest in mechanics. When he was out of school he worked in several places that did not especially interest him. His desire to work in a garage was thwarted because his father believed that he would there be in the wrong kind of company. Consequently, he had not held a position long at one time.

Turning to the study of Winthrop himself, there was nothing about his physical appearance that suggested a basis for criminality except somewhat heavy features, a comparatively weak mouth and chin, and unusual strength for his age. In spite of the fact that he was not yet sixteen years of age, he was five feet nine inches in height and weighed 155 pounds. His strength was unusual, he had an adult voice, and he showed almost all the characteristics of a grown man. The average weight for a boy of sixteen is 133 pounds and the average height is five feet, seven inches. Moreover, the precocious sexual development shown in Winthrop's case is highly important for an understanding of his delinquency. Physically he had reached the maturity that would be expected in a boy about twenty years of age.

According to the mental tests he graded as supernormal, his intelligence quotient being 116. There were no signs of poor mental balance. His personality traits showed that he was a gregarious individual, socially suggestible, easy-going, fond of pleasure, restlessly changeable, resentful of criticism by his family, self-assertive, and argumentative. He had always been unusually refined and clean-minded. Even as a little boy, while he was affectionate and kind to younger children, he was somewhat jealous of them, yet he had never appeared to have an abnormally sensitive nature. His indifference had come out even in his school work where he seemed to be uninterested in his success. He made the impression upon the examiners that, although he seemed sincere, he appeared to lack energy commensurate with his size and strength.

Here you have a complex of circumstances that together explain the making of this delinquent. First there stands out the physical overdevelopment and sexual prematurity, and yet the continuance of adolescent mental traits. Furthermore, you have a personality that is particularly suggestible, that taken in connection with overdevelopment accounts for his being influenced by a crowd of older boys. Add the fact that the real leader of the gang was able to avoid arrest because of political influence. Also there is the fact of being forced to take work in school and work at jobs in which he was not interested, at the same time being prevented from doing the things he liked. This case is a splendid illustration of how, in connection with other conditions, overdevelopment conditions conduct.²⁰

²⁰ *Judge Baker Case Studies, Series 1, Case 2.* For further details on these cases the reader should consult the published records themselves.

Healy has provided a large number of illustrations of the fact that early maturity puts a great strain upon the adolescent girl and accounts for many lapses in conduct.²¹

The following case from among the 500 cases of sex delinquency in adolescent girls studied by Miss Anne T. Bingham is an illustration of premature physical development in sexual delinquency in girls.²²

Winnie Ellis, aged seventeen years, when brought to Waverly House, was a well-developed and pretty girl. She was born in New York City of Jewish-Hungarian parents. They were married when they came to this country about nineteen years ago. Neither one is in good health. There are seven children in the family, the four oldest being married and having comfortable homes. A brother, aged twenty-one and another aged fourteen live at home. With the exception of the latter, all of these children are healthy.

Winnie graduated from grammar school at fourteen, never failed of promotion, attended regularly and did good work. Following this she studied stenography and typewriting. Then she worked as a cashier in a restaurant seven months at \$6.00 per week. She was discharged because of "certain irregularities and untruthfulness." Then she became forelady in a yarn factory, where she remained for six months at \$6.50 a week. She was discharged because she was said to be uninterested, incompetent, not punctual, and quarrelsome. Thereafter for two weeks she did clerical work at \$7.50 a week; her work was declared unsatisfactory, and it was reported that she flirted with salesmen who came into the office.

When she was about seventeen she became acquainted with a Jewish boy about four years older than she. This boy seduced her in his sister's house, and after that, although he frequently talked of marriage, postponed it on the plea of financial circumstances. A few months later he told her he needed some money for his business and persuaded her to try to get some for him, promising to make good. Soon after Winnie took from her brother-in-law's store several articles of jewelry worth about \$200 which she gave to her lover, who pawned them. A short time later her lover deserted her. She wrote him several times but received no answer. Piqued at this treatment, jealous, and also desiring pretty clothes, which she saw no chance of obtaining by proper means, she began a career of promiscuous relations with men.

In the mental examination Winnie showed no evidence of being psychopathic. She was ready and intelligent in her cooperation in the tests. However, it is plain from the study of her that her physical maturity had far outrun her mental development. There is a distinct retardation evident, especially when the higher mental faculties are involved, although she is not mentally defective. She scored a mental age of 12.2. She shows considerable general information, has facility in verbal expression, excellent auditory memory, and the ability to grasp and carry out confusing directions. Motor control is good. The routine work was quickly accomplished in the tests, but in the situations requiring the exercise of reason and judgment she did not do so well. She does not visualize vividly, and her imagination is not constructive in character. She has shown a tendency to make unwise choices when given an opportunity for independent action.

Her personality traits reveal her as a selfish, wilful, hard, calculating girl, ready to defend herself with little regard for consequences when they stand in the way of her gratification. She is devoid of altruistic impulses and conduct,

²¹ Healy, *The Individual Delinquent* (Boston, 1915), Sections 188-191.

²² "Determinants of Sex Delinquency in Adolescent Girls Based on Intensive Study of 500 Cases," *Journal of Criminal Law and Criminology*, Feb., 1923, pp. 499-501.

and her interest in a situation does not extend beyond her own viewpoint. Her overdevelopment and physical attractiveness not only excited vanity in the girl, but probably was an important causative factor in her delinquency by reason of subjecting her to attention and temptation. She has a natural desire for pleasure and gaiety and has not the judgment to discriminate as to how her desires shall be gratified.

In certain European studies malnutrition and other physical conditions affecting the physical development of the child have been cited as factors in delinquency. The studies in this country, however, have not shown that these conditions are of very great importance. On the basis of their careful study of 2,000 young recidivists in Chicago some years ago Healy and Bronner say: "What is true for Italy or England in these respects is not at all true for Boston or Chicago. Nothing so well illustrates this as our small proportions of those who are suffering from malnutrition and who are victims of the developmental conditions resulting in so-called 'degeneracy.'" ²³

ENDOCRINE GLANDS AND MISBEHAVIOR

In the wake of earlier biological fads came the emphasis upon the ductless glands as significant agents in the determination of behavior. One of the early publications in the field, that of Louis Berman, gave the movement an impetus.²⁴ Here again ardent votaries of a particular branch of biological science believed that the "open sesame" to the explanation of behavior variants was at last discovered. Because of these claims and similar claims of European writers and because of the *bona fide* advancements made by research in endocrinology, it is well that the criminologist be aware of the developments as they reveal possible relationships between glandular functions and behavior. An extreme statement of this view is found in *The New Criminology*, by Max G. Schlapp and Edward H. Smith. They assure us that "the reader will find as he proceeds that the glandular theory of crime accounts for all the discrepancies, errors, oversights and inadequacies of the earlier explanations."²⁵

A. W. Rowe offers a more conservative report of a study made of 650 subjects, all under seventeen years of age, who were referred for diagnostic study because of observable evidence that suggested endocrine imbalance.²⁶ Of these, 374 were discovered to have been suffering from endocrine disorders, while 276 were suffering from non-endocrine dis-

²³ Molitch and Eccles in their study of 554 boys in the New Jersey School for Boys, Jamesburg, N. J., confirms Healy's findings. See their "The Relation between Nutrition, Mental Level and Adjustment in Delinquent Boys," *The Journal of Nervous and Mental Diseases*, Vol. 78 (Aug., 1933), p. 123.

²⁴ Berman, *The Glands Regulating Personality* (New York, 1921). See also Grimberg, *Emotion and Delinquency* (London, 1928), for an attempt to verify the stand that the delinquent is diseased in mind and body.

²⁵ Schlapp and Smith, *The New Criminology* (New York, 1928), p. 72.

²⁶ Rowe, "A Possible Endocrine Factor in the Behavior Problems of the Young," *American Journal of Orthopsychiatry*, Vol. I, 1931, pp. 451-475.

orders. It was found that 18.3 per cent of the former and 13.0 per cent of the latter exhibited some form of behavior problem.²⁷ The author of this article admits that the findings of this study are not conclusive as to the relation between endocrine imbalance and misbehavior.²⁸ This statement has little need of supplementation.

Further study of the relations of the endocrines to human behavior is being carried on, but the results so far indicate that save in exceptional cases there is no direct relationship, without consideration of the bearing of other conditions, between the disfunctioning of the endocrines and behavior. In concluding his discussion of hormones, Dr. James Bertram Collip says: ²⁹

Summarizing, it may be said that behavior of the individual would seem to be determined by three things: (1) what he comes into life with—namely, his hereditary background; (2) his external environment; (3) his internal environment. It is only through this last channel that the direct effect of hormones on human behavior can be manifested. Indirectly, hereditary factors and the external environment can, as we have seen, produce changes in the hormone patterns of the internal environment.

ENCEPHALITIS AND BEHAVIOR

Some recent studies have shown that behavior problems sometimes follow in the wake of attacks of encephalitis. Stealing, inability to "get along" with other children, and so on, often are exhibited in the conduct of the individual in the postencephalitic period.

While often there are definite somatic lesions resulting from the illness, that these lesions are the cause of the misbehavior does not of necessity follow. Studies indicate that with proper training during convalescence the irritability is often lessened.³⁰ In some instances the training period failed to prepare the person so that he could succeed outside of the controlled environment. However, in not a few of these cases, the home to which the patient returned was made extremely undesirable by the presence of psychotic or neurotic individuals. Even with this sort of

²⁷ *Ibid.*, pp. 460-461.

²⁸ *Ibid.*, pp. 472-473.

²⁹ "Hormones," *Scientific Monthly*, Sept., 1935, p. 411. For discussions of other studies of the relation of the endocrine glands to conduct see Molitch and Eccles, "The Relation between Mental Level and Basal Metabolism in Juvenile Delinquents," *The Journal of Juvenile Research*, Vol. XVIII, July, 1934, p. 135; Molitch, "Endocrine Disturbances in Behavior Problems," *American Journal of Psychiatry*, Mar., 1937, p. 1179; Molitch and Poliakoff, "Pituitary Disturbances in Behavior Problems," *American Journal of Orthopsychiatry*, Jan., 1936, p. 125; also their article, "Gonadal Disturbances in Behavior Problems," *op. cit.*, Oct., 1936, p. 553; Selling, "The Endocrine Glands and the Sex Offender," *Medical Record*, May 18, 1938, p. 441. For an interesting study of homosexuality in which 195 cases were examined to ascertain the relation between their behavior and endocrine conditions, but in a different culture than ours, see Ribeiro, *Homosexualismo e Endocrinologia* (Rio de Janeiro, 1938).

³⁰ See Bond and Appel, *The Treatment of Behavior Disorders Following Encephalitis* (New York, 1931).

handicap many were able to succeed and often became the stabilizing influence in the home.³¹

Thus it would seem that the explanation offered in the instance of other physical handicaps is tenable here. The disability *may* conduce to delinquent behavior, especially where the demands of the social environment are too stringent, but the relationship is not compulsory. It is quite logical to suppose that postencephalitics may never appear in the ranks of delinquents, even of the mildest order.

We may summarize by saying that up to the present the studies made on the relation between the anatomical characteristics and the physiological functions of the individual and his conduct are not direct and determinative. These physical characteristics do provide conditions that demand adjustments of the personality to social standards and thus create difficulties. *A priori* we suspect that one's conduct is in part dependent upon his physical organism, since that organism provides the response to external stimuli. Common observation shows that not all human beings respond the same way to a given stimulus. We may argue that the varying responses are due to differences in the respective responding human beings. But we must not forget that training may have something to do with the way one behaves in the face of a given set of circumstances. It is probable that the physical characteristics have something to do with behavior, but just how closely the various physical characteristics of an individual, whether congenital or acquired, are associated with his conduct, we do not yet know. So far as physical characteristics do affect criminal conduct, it is probable that they operate indirectly rather than directly—through their bearing upon educational and occupational opportunity and through their effects upon the individual's ambition, self-esteem, and rôle in society.

QUESTIONS AND EXERCISES

1. Lombroso once said that he could go into a crowd of people and by observing their physical characteristics tell which ones have committed or will commit crime. Comment on this statement.
2. Of what value in the study of criminals are the "stigmata of degeneration"?
3. If prisoners in general are smaller in stature and lighter than non-prisoners of the same age group, or if all but criminals by violence are smaller and lighter than the free population, how do these physical conditions operate to produce criminality?
4. Point out in the cases given in the text how physical conditions do not operate alone to produce misconduct. In what sense then are they factors of criminality?
5. Look through newspaper files and medical journals for further illustrations of the influence of physical conditions in producing criminality.

³¹ See Bond and Smith, "Post-encephalitic Behavior Disorders," *American Journal of Psychiatry*, Vol. 92, July, 1935, pp. 17-31; Molitch, "Chronic Post-Encephalitis in Juvenile Delinquents," *American Journal of Psychiatry*, Jan., 1934, p. 843. The latter has a very good bibliography of foreign and American writers.

Chapter VII

MENTAL FACTORS: MENTAL DEFICIENCY, EPILEPSY

Any attempt to understand criminality that ignores the findings of the psychologist and psychiatrist as they are applicable to this field is bound to be conspicuously inadequate. Demonstration of the presence or lack of inferior endowment and mental aberrations in the delinquent are signal contributions to criminology that can best be supplied by the specialists in these various fields.¹ Among the factors contributing to behavior that deviates from the norms defined by law are mental deficiency, epilepsy, psychopathic personality, and the various psychoses. While the individuals diagnosed as falling into one or the other of these several classifications are not always sharply differentiated from those whom we call normal, the differences in behavior are not infrequently so gross that there is little question of the significance of the disability in question.

MENTAL DEFICIENCY AND DELINQUENCY

Every new discovery throwing light upon hitherto dark places in human knowledge is generally overemphasized at first. In the course of time the overemphasis is corrected by the discovery of certain facts that place limits upon the application of the discovery. This generalization is illustrated in the connection made between crime and mental defect. In the first flush of enthusiasm after the invention of the Simon-Binet tests had provided a means of measuring mental attainment, it was felt that

¹ Even Jeremy Bentham, before the development of modern psychology and psychiatry, suggested that criminals are mentally abnormal. He says, "Delinquents, especially of the more criminal descriptions, may be considered as a particular class of human beings, that, to keep them out of harm's way, require for a continued length of time that sort of sharp looking after, that sort of particularly close inspection, which all human beings without exception, stand in need of up to a certain age. They may be considered as persons of unsound mind, but in whom the complaint has not swelled to so high a pitch as to rank them with idiots or lunatics. They may be considered as a sort of grown children, in whose instance the mental weakness attached to a non-age continued, in some respects, beyond the ordinary length of time." He adds this note to this passage: "Policy, or I am much mistaken, the deepest and steadiest policy, will be found to concur with the tenderest humanity, in regarding the criminal world in this instructive and unimpassioned point of view. To an eye thus prepared, the most profligate offender will present—on the one hand, no fitter object of unprofitable resentment; on the other hand—no less necessary object of preventive coercion, than would be presented by a refractory patient or a forward child."—*Works, Bowring Edition* (Edinburgh, 1843), Vol. IV, pp. 173, 174.

mental deficiency was perhaps the most important single cause of criminality. With great labor and perseverance students sought to ascertain how large a proportion of our delinquents and criminals is feeble-minded. Naturally, they went to the institutions in which convicted offenders were incarcerated. What they found there seemed to indicate that at last there had been discovered a very important explanation of criminality. In Germany, for example, Aschaffenburg said:²

The fact that the intellectual capacity of the criminal is far below the average has already been the subject of detailed discussion. The experience of teachers and overseers in penal institutions fully confirms it. . . . A superficial examination of 405 prisoners with sentences of over six months showed me that apart from 31, whose mental state I shall speak of later, 67 were more or less feeble-minded, certainly far below normal in their intelligence; eight or ten were decided imbeciles, almost idiots. . . . I must confess that, after reading the papers in the case, I was often prepared to see a rough brutal man, when, in reality, I found a quiet, docile, even good natured feeble-minded fellow. This is true not only of those who are sentenced for the first time; precisely among people with long criminal records I have often found such quite feeble-minded persons; by this I do not mean imbeciles of such defective mentality that our exacting laws would classify them as irresponsible.

Likewise, in England Goring and Sir Bryan Donkin made high estimates of the proportion of prisoners who were mentally defective, Goring placing his estimate at 10 per cent and Donkin at 20 per cent.³ Goring in studies of the inmates of Parkhurst Prison found the percentage of feeble-mindedness varied according to the type of crime committed. He found that:⁴

"... mental defectiveness is associated the most intimately with stockfiring, but also to a very large extent with all crimes of malicious damage to property, and with unnatural sexual offenses; that it characterizes, in less degree, crimes of violence not associated with robbery; and that it is entirely dissociated, within the limits of our sample, from such crimes as embezzlement, forgery, etc., classed by us under fraud; in fact . . . with the exception of those technically convicted of fraudulence, all criminals are pronouncedly more mentally defective than are law-abiding persons in the general population.

Likewise in the United States investigators found in different institutions widely varying percentages of the inmates feeble-minded. Burnett thought 30 per cent a conservative estimate of the feeble-minded among our prisoners. Dr. Wiedensall thought she found 40 per cent of eighty-eight women given mental tests at Bedford Reformatory less capable mentally than the average Cincinnati working girl of fifteen. Goddard, one of the pioneers in this field in the United States, estimated that at least 50 per cent of all criminals were mental defectives. Sutherland points out that, as a result of routine tests given over a period of years

² Aschaffenburg, *Crime and Its Repression* (Boston, 1913), pp. 179, 180. (Copyright by Little, Brown and Co., 1913. Reprinted by permission.)

³ Hobbhouse and Brockway, *English Prisons Today* (London, 1922), pp. 15, 18.

⁴ Goring, *The English Convict: A Statistical Study* (London, 1913), p. 258. It should be noted that since 1897 all male defective prisoners have been sent to Parkhurst.

at the Indiana Boy's School, the proportion of delinquents diagnosed as feeble-minded dropped from 59 per cent in the period 1914-1917, to 10 per cent in the period 1922-1927.⁵ Other investigators reported from as low as 12 per cent to as high as 82 per cent. The general trend has been to find less mental deficiency among the inmates of correctional and penal institutions as the investigations become more carefully administered. Lack of proper controls distorted the earlier studies, often supporting the prejudices of the investigators.

Reaction against the findings of the early investigations came out particularly as the result of a comparison between the mental ratings of prisoners and the drafted men in the United States Army. Before World War I there had been no widespread study of the mental level of any large section of the general population. The publication of the results of psychological testing in the army provided a basis of comparison between the ratings of prisoners and those of the drafted men. Adler, who compared the results of psychometric tests of Illinois prisoners with the results of tests applied to the army draftees, concluded that the prisoners in his sample were about the same in intelligence as the draftees. Stone, who compared the intelligence rating of inmates of the Indiana Reformatory with men in the army draft from Indiana, and especially Murchison, who compared the intelligence level of prisoners in various parts of the country with that of a sample of 44,000 drafted men, found the prisoner much more intelligent than the draftees.⁶

One of the later studies of women that has corrected the overstatement of the early studies says,⁷

⁵ Sutherland, "Mental Deficiency and Crime," in Young, *Social Attitudes* (New York, 1931), p. 359.

⁶ For the earlier period characterized by rather high percentages see Goring, *The English Convict: A Statistical Study* (London, 1913), p. 259; *Social Hygiene Bulletin*, Apr., 1922, p. 7; Wiedensall, *The Mentality of the Criminal Woman* (Baltimore, 1916), quoted by Adler, *American Journal of Sociology*, Nov., 1917, p. 408; Goddard, *Feeble-Mindedness, Its Causes and Consequences* (New York, 1914), p. 569; *United States Public Health Bulletin*, No. 77 (June, 1916), p. 103; Bisch, "Feeble-Mindedness in Criminals," *The New Republic*, Vol. LVIII (1916), p. 66; Haines, "Feeble-Mindedness Among Adult Delinquents," *Journal of Criminal Law and Criminology*, Jan., 1917, p. 720; Anderson, *A Report of the Mental Deficiency Survey* (Madison, Wis., 1920), pp. 1-27; Barnes, *Journal of Criminal Law and Criminology*, Vol. XIII, Aug., 1922, p. 202; Jacoby, "The Psychopathic Clinic in a Criminal Court: Its Uses and Possibilities," *Journal of the American Judicature Society*, June, 1923, p. 24; Bingham, *Journal of Criminal Law and Criminology*, Vol. XIII, Feb., 1923, p. 540; Anderson, *Mental Hygiene*, Vol. III (1919), pp. 177-198; Doll, "The Comparative Intelligence of Prisoners," *Journal of Criminal Law and Criminology*, Vol. XI, Aug., 1920, p. 102. On the more recent studies see Karpman, "The Psychopathic Individual: A Symposium," *Mental Hygiene*, Jan., 1924, pp. 174-201; Stone, "A Comparative Study of the Intelligence of 399 Inmates of the Indiana Reformatory and 653 Men of the United States Army," *Journal of Criminal Law and Criminology*, Aug., 1921, p. 256; Fernald, Hayes, and Dawley, *A Study of Women Delinquents in New York State* (New York, 1920), p. 527; Murchison, "American White Criminal Intelligence," *Journal of Criminal Law and Criminology*, Aug., 1924, pp. 239 ff., and Nov., 1924, pp. 435 ff.

⁷ Fernald, Hayes, and Dawley, *A Study of Women Delinquents in New York State* (New York, 1920), p. 527.

With regard to intelligence, all indications are that the group of delinquent women is somewhat inferior to the general population, though the difference is slight and the overlapping large. This statement holds, though in varying degrees, whether we consider the separate sub-groups or the composite group. It should be noted, however, that our data have indicated less extreme distinction, with respect to intelligence, between the delinquent and the non-delinquent groups than that urged by many recent investigators, notably Goring. The most that we are prepared to say is that, other things being equal, there is apparently a greater presumption in favor of delinquency in a group of women who are below the average in intelligence than in a group above the average.

It should be pointed out that the intelligence level of the army draft men was very much lower than we had been led to expect before it was actually made. Consequently that necessarily reduced the intelligence level that had been assumed to be normal and in a like measure decreased the percentage of prisoners who were thought to be feeble-minded.

In these cases it must be remembered that both in the earlier and in the later studies, except those by Healy and Anderson, the tests were supposed to test intelligence. They do not attempt to test temperament and emotional organization, which play perhaps a greater part in direct criminal causation than intelligence. This is clearly recognized by Fernald, Hayes, and Dawley.⁸

It must not be forgotten also that Murchison's figures are based upon the Alpha group test of intelligence, upon which some doubt has been thrown as a test of native ability rather than of culture,⁹ and that Murchison compared native white criminals with native and foreign-born draft men.¹⁰ Furthermore, Adler included many women and Negroes in the institutions he studied, but as a sample of the non-criminal population with which to compare them he selected the principal sample of the whole draft instead of the Illinois draft. Erickson¹¹ compared the criminals he studied in Wisconsin with the 2 per cent estimate of feeble-mindedness in the general population made by the American Association for the Study of Feeble-Mindedness and used as a criterion for feeble-mindedness a mental age of twelve or less. Zeleny has attempted to reinterpret the findings of these three men—Murchison, Erickson, and Adler—on a comparable basis. He does so by reducing their respective findings to a percentage of prisoners below the mental age of eleven, and compares these findings with the percentage below the age of eleven in the general population as represented by men in the draft. Of the draft men Zeleny takes the findings of the draft in the five states in which the criminals were studied by Murchison; for Erickson's findings he takes the Wisconsin draft; and for Adler's the Illinois draft. As a result he finds that the percentages of these three men when reduced to this comparable level are

⁸ *Ibid.*

⁹ Kroeber, *Anthropology* (New York, 1923), pp. 75-79.

¹⁰ Murchison, *Criminal Intelligence* (Worcester, Mass., 1926), Ch. 4.

¹¹ "A Study of the Relationship between Intelligence and Crime," *Journal of Criminal Law and Criminology*, Vol. XIX, 1929, 592-625.

not far apart. The ratio of inferiority of criminals in institutions studied by these three men becomes 1.26 for the criminals as compared with 1 for the draftees. In all three cases the criminal population is slightly inferior to the general population as represented by the draft men.¹²

Sutherland's conclusions drawn from the results of psychometric tests of about 175,000 offenders included the following: (1) the wide variations in the results of the tests given in the last decade probably reflected the methods of the testers rather than fluctuations in the intelligence of the criminals; (2) the studies of groups of feeble-minded persons in the prisons do not show an excess of delinquency among them, as compared with the community at large; (3) persons who were convicted of sex offenses were more apt to fall into the feeble-minded category than persons convicted of other crimes; (4) the behavior of the feeble-minded inmate does not differentiate him from the non-feeble-minded; (5) the feeble-minded are about as successful on parole; and (6) their rate of recidivism is very nearly the same as those of normal endowment.¹³

A later study made by Bromberg and Thompson of the Psychiatric Clinic of the Court of General Sessions, New York, led the authors to conclude that "our work does not support the view that there is a specific relation between mental inferiority and crime. It tends on the other hand to show that mental levels in the criminal and non-criminal population, with the exception of the superior groups, correspond closely."¹⁴

Recently there has been published a study that "... represents the procedures, methods, and findings of a study of 10,413 prisoners in three penal institutions (adult prison, male reformatory, women's prison) in the State of Illinois during the seven-year period, 1920 to 1927."¹⁵ To render these results comparable to the ones secured from the examination of the Army recruits of World War I, the same general procedures and battery tests were used. The persons scoring below the equivalent of an I.Q. of 70 were reexamined individually.¹⁶

It is pointed out that the disproportionate size of the Negro population is a factor that must be taken into consideration in any comparison of

¹² Zeleny, "Feeble-Mindedness and Criminal Conduct," *American Journal of Sociology*, Jan., 1933, p. 575, Table IV.

¹³ Sutherland, *op. cit.*, pp. 357-375.

¹⁴ "The Relation of Psychosis, Mental Defect and Personality Types to Crime," *Journal of Criminal Law and Criminology*, Vol. XXVIII, May-June, 1937; p. 74. See also Chassell, *The Relation between Morality and Intellect*, Teachers College Contributions to Education No. 607 (New York, 1935); Glueck, "Mental Retardation and Juvenile Delinquency," *Mental Hygiene*, Vol. XIX, No. 9 (Oct., 1935), pp. 579-585; Lane and Witty, "Mental Ability of Delinquent Boys," *Journal of Juvenile Research*, Vol. XIX, Jan., 1935, pp. 1-12; McClure, "Intelligence of 600 Juvenile Delinquents," *Journal of Juvenile Research*, Vol. XVII, Jan., 1933; Owen, "The Intelligence of the Institutionalized Juvenile Delinquent," *The Journal of Juvenile Research*, Vol. XXI, Oct., 1937, p. 5; Young, *Personality and Problems of Adjustment* (New York, 1940), Chs. XVI and XVII; Zeleny, "Feeble-mindedness and Criminal Conduct," *American Journal of Sociology*, Jan., 1933, pp. 564-576.

¹⁵ Tulchin, *Intelligence and Crime* (Chicago, 1939), p. 3.

¹⁶ *Ibid.*, p. 7.

the prisoner and the non-prisoner intelligence rating.¹⁷ Discrepancies between the scores of the Southern-born and Northern-born Negro, and between the newly arrived immigrant and those who had preceded him are also indicated as qualifying factors.

As was reported elsewhere, those convicted of sex offenses were more likely to be found among the low-scoring group, and those persons convicted of fraud were generally of the group designated as superior.¹⁸ It is also of interest to note that this piece of research revealed that, with few exceptions, the recidivists scored higher on the intelligence tests than did the first offenders. The percentage of inmates of inferior intelligence was much greater and the percentage of superiors much smaller among the women offenders.¹⁹ The sample of only 153 women is so small that one cannot be certain of the reliability of this contrast with the male offender, but the discrepancy is so great that a significant difference is suggested.

When compared with the results of the Army tests, the percentages of inferior, average, and superior men in the penitentiary are quite similar, but fewer inferiors and more superiors were discovered in the reformatory group. This discrepancy is explained by the differences in the proportion of immigrants and Negroes in the several populations.²⁰

A. W. Brown and A. A. Hartman of the Institute of Juvenile Research of Chicago report a survey of the intelligence of 13,454 adult male prisoners admitted to the penal institutions of Illinois from 1930 to 1936.²¹ The conclusions reached were that this sample of prisoners showed: "(1) approximately the same average level of intelligence as that revealed for the adult population by the Army draft; (2) a more heterogeneous distribution of intelligence than that of the general adult population; (3) a disproportionate amount of mentally retarded and mentally defective men; (4) approximately the same proportions of superior and very superior individuals as in the general population."²²

Over a period of years, the present author has engaged in and supervised a series of research projects on the inmates of the Wisconsin state penal institutions. Among these is the compilation of the I.Q.'s of some 1,118 inmates of the state penitentiary at Waupun. It was discovered that the mean I.Q. was 79.1, the median 78.2. Of the total, 28.6 per cent had I.Q.'s below 70. A breakdown of these figures is of interest in that it revealed that 40 per cent of the murderers, 49.1 per cent of the sex offenders, and 25 per cent of the property offenders had I.Q.'s of less than 70. These distributions correspond roughly to those reported in other

¹⁷ *Ibid.*, p. 153.

¹⁸ *Ibid.*, p. 155.

¹⁹ *Ibid.*, p. 163.

²⁰ *Ibid.*, p. 153.

²¹ "A Survey of the Intelligence of Illinois Prisoners," *Journal of Criminal Law and Criminology*, Jan.-Feb., 1938, pp. 707-719.

²² *Ibid.*, p. 719.

research monographs on the relationship between offense and intelligence.²³

In comparing the intelligence by the letter grades used in the Army draft of 1,118 prisoners in the Wisconsin State Prison with 997 members of the Wisconsin draft who took the Alpha test only, mean mental ages of 12.32, and 13.58, respectively, were found. The differences of 1.26 years in mental age between the two groups is so great that the operation of chance in producing the discrepancy is unlikely. Or stated in another way, the ratio of the 1,118 prisoners below the mental age of eleven years to the men in the Wisconsin draft in World War I who were tested by the Alpha test was 1.75 to 1. Or if the sample of 627 from the Wisconsin reformatory be combined with these from the prison, the ratio was 1.67 to 1. It should be borne in mind, however, that many drafted men were rejected because of patently low mental level by the local draft boards. Also some of those sent to the camps by the local draft boards were so handicapped by language difficulties that they had to be given the Beta test and are not included in the 997 with whom the prisoners were compared. These two conditions gave the drafted men a higher mental level than the whole draft in Wisconsin probably had, and therefore lessens the probability that the difference in mental level was actually as great as the above ratios would suggest.²⁴

Jenkins and Brown found that the pattern of geographical distribution of mentally defective children in Chicago coincides closely with that of the areas of delinquency revealed by the studies of Shaw and his associates at the Institute of Juvenile Research.²⁵ Later Lichtenstein and Brown studied one of these deteriorated areas in Chicago, characterized by high rates of dependency, a large foreign and Negro population, and high rates of adult crime and juvenile delinquency.²⁶ Only 43.6 per cent of the children examined in this area had an average I.Q., compared with 60 per cent of an unselected school population studied by Terman. Ten per cent of these children had an I.Q. below 70.²⁷

It is probable that the economic and social conditions in such an area attracted an undue proportion of the feeble-minded for residence, just as it selected the others of lower economic standing. Also it could be argued that the economic and social conditions there were such as to induce more of the feeble-minded to break the law than if they had lived in an area with more wholesome conditions.

One must exercise caution in drawing conclusions from the welter of material that has been published on the subject of intelligence and crime.

²³ *Cp. supra.*, Sutherland, Goring.

²⁴ Gillin, *The Making of the Wisconsin Prisoner* (Madison, Wis., in press.).

²⁵ Reported by Lichtenstein and Brown, "Intelligence and Achievement of Children in a Delinquency Area," *The Journal of Juvenile Research*, Vol. XXII, Jan., 1938, p. 1; also see Shaw, and others, *Delinquent Areas* (Chicago, 1939).

²⁶ Lichtenstein and Brown, *op. cit.*, p. 4.

²⁷ *Ibid.*, p. 20.

Investigations embodying more stringent controls than those of the studies reported to date are prerequisite to the drawing of definite generalizations. It must be borne in mind that the work done so far has taken samples from within several states, and that as a consequence there is no assurance that the results are representative of the American prisoner in general. Furthermore, it may be that only the less intelligent criminal is detected and committed to prison.

Even were these factors corrected, there would still remain the question of the control groups. Reliable norms of intelligence for the larger community are still wanting, both for the populace in general and for the subcategories that are comparable to the population of penal institutions. The Army Alpha and Beta Tests, against which most of the prison studies were projected for comparison, have been questioned at several points. Conditions under which they were given were not ideal from a scientific viewpoint. Further unquestioned tests for inmates of penal institutions have yet to appear.

So, while it is probable that the population of the prisons are subrepresentative, intellectually, the studies have been of value in helping to discredit one of the more persistent particularistic explanations of aberrant behavior, namely, that the majority of criminals are feeble-minded.

How feeble-mindedness operates in connection with other factors to produce criminality may be seen in actual cases.

CASES OF MENTAL DEFECT

As one reads case histories of delinquents, he is met with the rather frequent mention of the mental defective.

THE FRED TRONSON CASE

Dr. Goddard has studied three cases of criminal imbeciles in order to show how mental defect leads to crime. One of these cases is that of Fred Tronson of Portland, Ore. At the time of committing murder he had lived in Portland for two years, during which he had held seven different positions as elevator man. When he was twenty-four, in August, 1914, he met and fell in love with Emma Ulrich, a stenographer. He asked her to marry him and when she refused he threatened her and, upon complaint, was brought before the authorities and ordered to leave town and not annoy Miss Ulrich further.

On November 16th he came back to Portland, waited for her on the street near her home and when she stepped off the street car he again asked her to marry him. Frightened, she ran toward her home. He followed, shooting at her as he went, followed her into her house, and there killed her. Since Oregon had abolished the death penalty, he could be sentenced only to imprisonment for life. During the trial he had been examined by two alienists, pronounced sane but of low mentality. Examined also by a psychologist, he was found to have a mental age of nine years. His social history coincides with his low mental grade. According to his mother, he had never been able to hold a job more than two or three months. Furthermore, his conduct at and before the trial in the judgment of Dr. Goddard was that of an imbecile. For example, when examined at the police station, he seemed to be in great fear that someone outside would do him harm. During the course of selecting the jury and while testimony was being

taken he slouched in his chair with sunken eyes grinning at each witness and with his mouth hanging half open as though he barely understood what was going on. He signed a confession, which shows his simple-mindedness and the lack of cunning characteristic of the imbecile.

After his arrest for annoying the girl he was kept in Portland about a week and then released with the understanding that he was to go out of town. Judge Stevenson told him to go out to the harvest fields and take a good sweat and when he came back and looked for another job he would be all right. He went the next Monday, stayed a few days, could not get anything to do, came back, waited around about two weeks and then went to Hood River where he picked apples for a time, remained there about ten days and came back because he could get no further employment.

This decision to kill Miss Ulrich he came to the previous week. After making up his mind to that effect he went to Vancouver and bought two guns. He confessed that he intended to shoot her. He came back immediately to Portland after buying the two guns, each at a different store so that they would not suspect him of anything. He said he wanted two so that if the one did not work, the other would. He loaded the guns in South Portland and walked to the street corner at which he knew she would alight from the street car; and he stood around only a few moments until she appeared, a little before six o'clock. When she got off he approached her and said "Wait a minute." In his confession he said he wanted to talk to her and ask her for the last time if she would marry him. He said she started running and "hollering." This was about half a block from her home. He followed her, he confesses, as she ran around the house to the back and just before she went in the back door he commenced shooting. He fired one shot before she went in, and following her into the house, he fired four more. She ran into the bathroom, to which he followed her, where "she began to crunch down; then she fell on her face like a board and struck her head on the floor. I thought she must be dead or unconscious or something like that. I left then. I took it for granted she was dead." He confessed that he was sorry he had to do it but that he was determined that no one else should have her if he couldn't. He said that she told him once she liked him, that he had acted like a gentleman, and that he had given her one present, and he didn't see any reason for her turning him down.

After killing her he ran out the door down a street and in his excitement dropped in the grass the gun with which he had done the shooting. He got a car to Vancouver, attended a motion-picture show for half an hour and went to a rooming house, where he stayed all night. He confessed that he lay awake and didn't sleep at all because he was nervous at having killed her. The next morning he went out to Pacific Highway with the intention of getting the papers to see if he really had killed her. If he had, he said, he intended to go back and shoot himself at the same place he shot her. After reading in the papers that Miss Ulrich was dead, however, he kept going in the opposite direction from Portland because, he said, he did not want to run into the police. His intention was to go around Seattle and Tacoma and "cross over and come back around." He said he feared that bloodhounds would be sent after him and that he would get shot down in the road. He insisted that he wanted to get back to the spot where he had killed her, so that he might there shoot himself.

On being questioned by the officials he said that he knew it was wrong to kill her, but "all I was thinking about was about her." On being asked whether he did not know it was wrong to take that which he could not give, and that it was doing wrong when he went over to get the guns, he replied, "I didn't take it very serious then like now."²⁸

²⁸ Goddard, *The Criminal Imbecile* (New York, 1915), pp. 67-81.

This case illustrates the manner in which low mental capacity may operate with other factors in a situation to precipitate disastrous consequences, both for the handicapped person and for others.

HOW TO PREVENT DELINQUENCY IN THE FEEBLE-MINDED

Eugenics has been proposed as the only method by which the stocks inimical to socialized conduct may be eliminated. In some of our states sterilization laws have been passed. However, in the present state of the law and of public opinion, such laws when applied to criminals have been declared unconstitutional as cruel and unusual punishments. Doubtless, however, a program of positive and negative eugenics would help in the solution of the problem. Such a program would do much to instruct the people among whom these potential criminals live so that the public would treat them for what they are and not put burdens upon them which they cannot bear. So far as the inheritance of feeble-mindedness affects the problem of crime, Goddard has suggested certain considerations we should bear in mind. If, in the present state of public opinion, it is impossible to sterilize all who should not reproduce, and if on account of the cost it is impossible to segregate in institutions all the feeble-minded, nevertheless there are some things we can do to diminish criminality on the part of the feeble-minded.

Social Measures. We can take such social measures as will make it less probable that the feeble-minded will develop into criminals. As Goddard has said, speaking of the feeble-minded: "Some intelligence is possessed by all, unless possibly the very lowest. It is a question of degree and of the need that the individual has of intelligence, in other words, of his environment. If an individual cannot adapt himself to his environment, can we not adapt the environment to him?"²⁹ We can segregate in institutions and colonies certain of the feeble-minded who cannot live at large. By adjusting our educational methods we can give the feeble-minded children an education that they are fitted to receive and that will prepare them for as useful life as their poor abilities make possible. In so doing we shall prevent the present reactions against school on the part of the feeble-minded who fail to learn; we can inspire hope and the development of their best efforts; and we can reduce the temptation to commit crime because of need.

Furthermore, if we can bring the public to recognize the nature of the feeble-minded and to see in them, no matter how old they are, only incapacity to assume much responsibility, then we shall be able to get the public to take the attitude toward them that is similar to that which it takes toward children. They will not be given jobs they cannot be ex-

²⁹ Goddard, *op. cit.*, pp. 586-587. See also Davies, *Social Control of the Mentally Deficient* (New York, 1930), for a good discussion of practical measures taken in the adjustment of persons of low mental endowment.

pected to fill. We shall not place upon them responsibilities in economic or social life that they are unable to carry. We shall then throw about them the safeguards that we place about children. The public attitude, instead of taunting them into criminality, will guard them and protect them from the temptation they are unable to withstand.

The other forms of mental abnormality transmitted from parent to child may also be handled by sterilization or segregation, or by social treatment they may be prevented from developing criminal conduct. With the development of mental hygiene among the population, earlier attention to the incipient signs of mental disturbance should enable society to take steps to prevent criminal outbreaks.

Furthermore, the education of the public as to the nature of mental defects and mental disorders will do much to solve the problem of the development of these socially undesirable conditions. Until we come to the place where we shall not permit the procreation of feeble-minded, we shall have the problem of crime owing to the inheritance of characteristics unfitted to our present-day civilization. When the public comes to understand the facts of biological heredity and the social consequences of physical and mental defect and abnormality, it will then be possible to put into operation a program for the elimination of certain biological defects, a program, however, as Jennings remarks, of somewhat limited usefulness.³⁰

We must not forget, however, that the hereditary influences work themselves out in a social environment. While we attempt to study the various factors that make the criminal, we must remember that crime is the product of a number of complex influences.

Epilepsy and Delinquency. At least since the day of Lombroso it has been recognized that there is a significant association of epilepsy and aberrant behavior. Healy reports that, in his series of 1,000 cases of young recidivists, 7 per cent were known to be definitely epileptic, while there was doubt about a number of other cases.³¹ Since there are about three epileptics to every thousand inhabitants of the United States, the incidence of the disease in the sample of juvenile delinquents is about twice that of the normal population.

Knowledge of the group of convulsive disorders known as epilepsy is quite limited. One subgroup of these disorders, the etiology of which is unknown, is spoken of as "idiopathic." It is generally believed, however, that there is an organic basis for these disabilities. Another class is variously designated as psychic, or hystero-epilepsy. The latter class is quite distinguishable from the idiopathic variety (*grand mal*, *petit mal*) and is fostered by certain unresolved social conflicts. The convulsions and the attending phenomena are often utilized as attempts to control, or to escape from, the environment.

³⁰ Jennings, *Biological Basis of Human Nature* (New York, 1930), Ch. X.

³¹ Healy, *The Individual Delinquent* (Boston, 1915), pp. 147, 416.

One recognizes in the general characteristics of the epileptic certain proclivities that make him a candidate for delinquency. Healy states that, among others, these characteristics are typical of the epileptic: tendency to emotionalism with much inconsistency in feelings; irritability, either constant or manifested in a sudden burst of anger and vicious conduct; sometimes the assumption of a virtuous attitude accompanied by moralizing and preaching; at other times the utmost cruelty; sullenness; bad temper; impulsiveness; egocentric tendencies; obstinacy; lack of ethical perceptions; and frequently marked emphasis upon sexual phenomena.⁸² Frequently the convulsive attacks are followed by clouded, or twilight, states. It is during this twilight state that the person's judgment is particularly defective, and the events taking place during this stage are not recalled after lucidity has returned.

In a study of twenty-two patients who were admitted to the Boston Psychopathic Hospital because of psychosis that was accompanied by epilepsy, the clouded states were the most common of the disabilities following the attacks.⁸³ Delusions were exhibited by twelve of the patients, the same number showing hallucinatory symptoms, and eleven of the latter also manifesting delusions.⁸⁴ Others evidence the typical behavior as pointed out by Healy above, that is, variation in mood, disorientation, defective judgment, and so on.

While the organic basis of idiopathic epilepsy is not known, a probable explanation of the delinquency of the patient is available in the undesirable social status in which he finds himself. "The frustrations and restrictions in the lives of epileptics are notorious. They cannot travel about freely, they have few friends, their careers are cut short, they seldom marry, so that their existence is nearly always drab and unhappy. The deeper clouded states, with their wild and aggressive behavior, may be looked upon in one sense as blindly furious rebellions against this fruitless existence, releasing tumultuously the pent up feelings of years."⁸⁵ It is also logical to suppose that the persistent personality problems recognized in even the mildly epileptic are likewise reflections of abnormal definitions of social situations engendered by the identifying disability. In this respect, we are not warranted in viewing delinquency as a necessary associate of epilepsy.

One of Healy's cases is illustrative of instances wherein epilepsy seems to be a significant factor.⁸⁶

This is the case of a young man eighteen years of age who had been under frequent observation for three years. So far as could be learned there was no insanity, feeble-mindedness, or epilepsy in either of his parents' families. At

⁸² *Ibid.*, pp. 417-419.

⁸³ Clark and Lesko, "Psychosis Associated with Epilepsy," *American Journal of Psychiatry*, Vol. 96, Nov., 1939, p. 606.

⁸⁴ *Ibid.*, p. 599.

⁸⁵ *Ibid.*, p. 605.

⁸⁶ Healy, *op. cit.*, pp. 420-424.

about two years of age he began to have fainting spells. In the year before Dr. Healy saw him he had had six attacks in which he fell and bit his tongue. Sometimes he had attacks in which everything went black before his eyes.

In mental capacity he was found to vary a great deal. At certain times he was extremely dull, while at other times he would talk about the possibility of his becoming a lawyer. In certain things he did fairly well, but in other things very poorly.

His delinquency also showed variable types of behavior. He had stolen both from members of his family and from other people; he had quarreled a great deal with his brothers and even threatened their lives. He attempted once to cash a check which he had taken from the family mail box; he had also been immoral. He tried to wreck a train, but was unable to give any motive. He had no grudge against the railroad people or anyone on the train. His memory was a blank for quite a while before this attempt. His feeling was that the act was the result of a sudden impulse which he could not explain. He said that he felt strong impulses on occasion to commit other deeds of crime.

One can find in the foregoing discussion of the nature of the disease a possible explanation for the delinquencies of this particular patient. This is also true for the case that follows. Operating on the theory that there is no uncaused behavior, it is logical to seek the explanation of the particular type of behavior in the experience of the patient.

The following crime was committed by an epileptic who had been confined in one of the state hospitals for the mentally ill.

During the night, it appears, he had an attack, escaped from the institution, and clad only in his nightclothes walked several miles through the snow until he came to a farmhouse, where a man and his wife and several children were sleeping. He procured an axe, killed all the members of the family, then wandered off and the next morning was tracked to a haystack where he was found asleep and nearly frozen. When awakened he claimed to have no knowledge of his action since he went to bed in the hospital. When showed the bloody axe and his tracks from the house to the haystack, he displayed astonishment beyond measure.

It is probable that this attack upon the farmer's family occurred in the wake of an epileptic convulsion, during the typical clouded state.

Instances of this order, and the general knowledge that epilepsy and behavior deviations are significantly associated, are indication enough that the care of the epileptic patient is a responsibility not to be overlooked by those charged with safeguarding public welfare. The psychiatric clinic, not the criminal court, is the proper place for the epileptic.

Thus it appears that mental abnormality, whether operating through defect, inherited or acquired, or through epilepsy, is a condition of the individual make-up favorable to criminality under certain social conditions. Individuals so constituted are not a serious menace to society, if they have thrown about them proper social conditions. The feeble-minded and the epileptic can be so handled that they do not become criminal. The trouble lies in the fact that society has not learned to adjust its arrangements to the peculiarities of these people. If we take them

young enough, we can teach some of them new habits. We can adjust their social circumstances so that such people will not be moved to crime. We can throw about them influences that will be helpful rather than harmful.

QUESTIONS AND EXERCISES

1. How many times as often is feeble-mindedness found among prisoners as in the general population?
2. What would you reply to the contention that the reason mental defect is found among the prisoners to so large a degree is that the brighter people are just as delinquent but are clever enough not to be caught?
3. Assuming that the feeble-minded have no special bent toward crime, being but children in mind, that instead of being specially quarrelsome, highly sexed, and unusually cunning, they are simple beings, unusually good natured, suggestible, undersexed, and can form good habits as easily as bad ones, how would you explain their criminality?
4. In what respect does epilepsy differ from feeble-mindedness in the making of the criminal?
5. Explain the discrepancy between the early and the later findings of the mental testers as to the relation between mental defect and criminality.
6. Discuss the statement that the feeble-minded person has a greater potentiality for criminality than the person of high intelligence.
7. In the Fred Tronson case what steps could have been taken by society to prevent his becoming a criminal?

Chapter VIII

MENTAL FACTORS: PERSONALITY PROBLEMS, NEUROSIS, AND PSYCHOSIS

Mental disabilities as significant factors appear in delinquencies ranging from the minor neighborhood annoyances to the more serious, bizarre offenses that are so welcome as newspaper copy. Aside from the class of mental illnesses known popularly as the insanities, there are certain less serious forms of mental abnormalities that operate to disturb the relationships between the individual and society. We shall treat these various disabilities in order of their seriousness under the headings of (1) personality conflict, (2) neurosis, and (3) psychosis.

Personality Conflict. As one's knowledge of human nature grows, it becomes increasingly difficult to conceive of an individual who has no personality problems. This is especially true in dynamic societies where the restrictions and demands upon the members are both numerous and varied. The unstable character of the social milieu demands a breadth and flexibility of personality that is rarely obtained. Man's tendency to form habits militates against the maintenance of the adaptability that is prerequisite to permanent accord with a shifting environment. (The word *habit* is used here in the sense used by John Dewey, that is, not as designating mere repetitious action, but instead a readiness to response, a characteristic sensitivity to certain environmental stimuli.) This is true not only of habits, or traits, that are more or less widely diffused among the members of a particular segment of society, but also of unique personality characteristics of the individual. The former, or common, trait that may operate to induce delinquent conduct will be discussed at length in later chapters. Let us concern ourselves for the present with the development of values, beliefs, and so forth, in the individual that make him a candidate for delinquency. Because of the limitations of space the discussion of these social-psychological factors is of necessity abridged.

In the discussion of these attributes of personality one must remember that each factor conducing to aberrant behavior is important because of the meaning it has for the person. It is for this reason that individual attention is necessary in discerning the elements in the personality configuration that are principally responsible for the person's lack of accord

with his social environment. For such treatment one must resort to the psychiatrist, the case worker, or the social psychologist.

The rôle taken by physical handicaps has been described in a preceding chapter. The socially acquired handicaps are roughly similar in their manner of operation. It is not uncommon to find instances wherein parents and other adults, through their efforts to control children's behavior, have established in the personalities of the latter standards of conduct that are held by them to be inviolable. Although modern sociology holds that social right and wrong are relative concepts, the life organizations of society's members are so habituated to certain norms of behavior that these norms function as absolutes. The belief in free will and in the efficacy of supernatural forces to penalize those who depart from the approved standards prepares the way for friction within the personality pattern. Much has been written concerning the guilt feeling that attends the departure from these norms. One does not have to go the full distance with the extremists to recognize the possibility of a feeling of guilt eventuating in delinquent behavior.¹

It is not surprising to find many personality problems with sexual involvements. Attempts to direct the sexual life of youth in our civilization have been largely by way of encouraging ignorance and by designating sexual phenomena as "evil," "sinful," and so on. In this way the groundwork is laid for subsequent conflict between desires and the habit pattern that we are wont to label "conscience," "super-ego," and so forth. Attempts to resolve these conflicts often involve behavior that runs counter to legal restrictions. While much fog still surrounds the deep-seated personality problems, the probings of psychiatrists and other specialists in this field are revealing hitherto unsuspected relationships with the aid of which these same specialists enable many of these persons to resolve their conflicts without delinquent behavior.

Similarly, one's inability to adapt his desires and ambitions, and so on, to the limitations of personal equipment and available environment is also conducive to conflict and frustration that may result in delinquency. The thesis that frustration is always followed by aggression has been stated, and some work has been performed in the effort to substantiate the assertion.² We do know that aggression may follow frustration, and that this aggression is apt to be extra-legal in nature. However, it is yet to be demonstrated that the one is the inseparable companion of the other.

The three following cases are illustrative of the manner in which un-

¹ See the publications of Alexander and Staub, *The Criminal, The Judge and the Public: A Psychological Analysis* (London, 1931); Alexander and Healy, *Roots of Crime* (New York, 1935); Adler, "Roots of the Criminal Pattern," *The Police Journal*, Vol. 17, p. 5; Hartwell, *Fifty-Five "Bad" Boys* (New York, 1931); Coutu, "The Criminal Personality," *Federal Probation*, Oct.-Dec., 1942, p. 25.

² Dollard, Doob, Miller, Mowrer, and Sears, *Frustration and Aggression* (New Haven, Conn., 1939).

resolved personality conflicts instigate delinquent behavior. The first instance cited will appear to tax the credulity of certain readers. The exact relationship between the experience of a sex-shock and subsequent deviations in conduct is not clearly understood, yet it has been observed that there is an association between these two phenomena. The case is offered as illustration, not as proof of this observation.

THE WILLIAM RYBERT CASE

William Rybert, aged fifteen years and two months at the time he first came under the observation of Dr. Healy of the Judge Baker Foundation of Boston, was born of American parents in California. His delinquencies ranged from lying and stealing money and numerous articles to joining others in stealing an automobile and then blackmailing his mother to obtain means of running it. The family background was quite desirable.

In William's developmental history there are no signs of any difficulty until he was about six and a half or seven years old. Illness of his father at this time resulted in relaxed supervision by the mother, and on several occasions it became necessary to send him to a suburb to stay with relatives. It was after the first long stay there that his mother detected his lying for the first time. That spring he showed signs of being nervous, fidgety, and restless, and he developed night terrors and began to bite his finger nails. It was at this time, as far as his mother knows, that he first stole. The psychological examination indicates that he was even supernormal in general ability. When examined there was no evidence of anything wrong with him physically. As observed by the Foundation, his personality traits were good.

When the boy was interviewed and his confidence secured, he told a story that illuminated his delinquency at once. During this first stay with relatives, at about six and one half or seven years of age, he met some boys who introduced him to a certain knowledge of sex affairs. He remembers that it was following this introduction to matters that had been a closed book to him that he began to steal. Moreover, this shock was supplemented by another. When about ten, while spending the summer on a farm, he met an elderly man who drew pictures for him and the boys with whom he associated, and told them vulgar stories about the pictures. These experiences apparently set up in his mind a train of ideas and induced unrest and temptations with which he had not been prepared to cope. Also, some things of a similar nature were learned from a certain George with whom he had been associated for the past few years. William said that George was "an awful liar and he is immoral with girls." It was with George that he had been engaged in stealing automobiles.

This association is deemed to have confirmed him in habits that the mental conflict seemed to have set up. The exploration of the difficulty by the clinic with the help of the boy and the formation of new ties of association was all that was necessary to start the development in an entirely acceptable way.

Say Drs. Healy and Bronner, who studied the case: "In presenting this case we have in mind the class of cases of which it seems fairly typical, a class comprised of individuals with good mental equipment, sometimes coming from what is considered a good home life, who have gone on and on into delinquency because their fundamental situation, often one of inner stress, has never been understood and met."³ Eight years of increasing failure, during which time no careful exploration of the case was made, were followed by rapid and thorough recovery.

³ Judge Baker Case Studies, Series I, Case 16.

THE EDWARD SOMES CASE

The inability to reconcile the behavior of his mother with the rôle which he had assigned to her provoked delinquent behavior in this case. Healy and Bronner hold that this is a frequent factor in the delinquency of young individuals.⁴

Born in England of English parents, he spent his infancy in the United States. For three years he had been engaged in stealing. The stealing was sometimes from neighbors but more often from relatives. Once also he ran away. The father and mother were both delinquents, and both possessed weak characters, neither of them showing stability or a sense of responsibility.

The developmental history of Edward shows no abnormality. There is no evidence that he was neglected or poorly treated in any way. At eight years of age he began living with relatives.

There is likewise no evidence that in his social adjustment he was troubled by his home treatment, or by any difficulties with his young companions. While at first Edward had seemed keenly anxious to see his mother and appeared to enjoy her visits, after two or three years the family noticed an entire change. After seeing her he was frequently irritable and morose.

When he was interviewed at the Judge Baker Foundation, he showed signs of being deeply disturbed and unhappy. During the exploration of his difficulty, he said that he did not plan his stealing beforehand but did it on impulse. He never heard of any stealing going on in school, or any talk about it. He had never read stories about stealing. While he had heard some vulgarity among the boys, he said these things had never worried him. In this case, as contrasted with that of William Rybert, the delinquency does not seem to be sex-linked. As a result of the examination by the psychologist, it was discovered that Edward's difficulty was linked up with his thoughts about his mother. He confessed that he knew that she sometimes stole. After this confession he became more confidential and further acknowledged that when he heard about his mother's stealing it "got on his mind." Then, shortly after hearing that she stole, he was spending a week-end with her and went to the store where she worked. Unbeknown to her, he saw his mother discharged by the manager of the establishment, because she had been caught stealing. He thinks about this frequently, and it worries him. He says that all these things happened before he ever took anything. On questioning, he admitted that he feels very unhappy about it and sometimes feels so discouraged that he just doesn't care. He says nothing makes him unhappy except his mother, and it does make him unhappy to think of her.

A third case, one in which the significant elements of the personality configuration escaped detection, is given in brief form below.⁵

Adequately endowed in mind and body, the boy in question presented a problem to his parents, teachers, and the court for a long period. His delinquencies began early and were varied. Irritable and nervous at home, he exhibited "spunky spells" and finger-nail biting. He apparently did not want for attention from his parents, a stern dogmatic father, and a religious, affectionate mother.

The boy was reticent, confiding in nobody, even, it appeared, repressing much from himself. While he presented a defiant front to the world, "...sometimes tears were in his eyes and he very evidently was suffering from some inner stress." His record includes frequent thieving, forging, robbery, misrepresen-

tation, and so on. He was placed on probation several times, provided with good jobs, yet his subsequent actions betrayed the confidence placed in him. He was finally committed to the penitentiary. The consulting psychiatrists say of the case that "From the time of our earliest study we recognized that we did not know the essential trouble with this boy, and unfortunately no prolonged analysis of the motivation of his career was ever made."

THE PSYCHOPATHIC PERSONALITY

A more clearly defined category of abnormal personality than that growing out of conflict with the personality just discussed, is what has been called "the psychopathic personality." The psychiatrists are still debating the limits of this category, because of differing judgments as to the distinguishing characteristics. But they agree that there are individuals who cannot be classified under the various neuroses or psychoses. These cases have been variously called "psychopathic personalities," "psychopathic inferiors," or "psychic constitutional inferiors."⁶

But whatever the specific term used, the psychiatrists intend to designate thereby those who show chronic, abnormal, social and mental reactions to the ordinary conditions of life, but who cannot be classified in any group of the psychotic, neurotic or mentally defective.⁷ The signs of this class are extreme selfishness, irritability, suggestibility, mental fatigue

⁶ Bleuler, *Textbook of Psychiatry*, tr. by Brill (New York, 1924), pp. 569-592, discusses under the heading, "The Psychopathies," nine different phases. Kempf, *Psychopathology* (St. Louis, 1921), p. 206, insists that such terms as *constitutional inferiority*, *psychopathic personality*, *constitutional psychopathy*, and so on, should all be included under "suppression" or "anxiety neurosis." Healy, *The Individual Delinquent* (Boston, 1924), Ch. XIX, p. 576, uses the term, "*psychic constitutional inferiority*" to include a great deal "that has been designated as psychopathic inferiority, psychopathic constitution, psychopathic personality, degeneracy, and morbid personality. Paul Schroeder of the University of Leipzig uses the term *psychopathic personality*, under which he classifies those who are not insane (psychotic) or feeble-minded, and describes one group as "the most dangerous, the most actively asocial and criminal group." These "show a lack of and are incapable of emotional response to others (Anagapen)." See his "Psychopathic Personality and Character Abnormality," *Bulletin of the Massachusetts Department of Mental Diseases*, Apr., 1935, pp. 2-6. White, *Mental Hygiene*, Jan., 1924, p. 176, says, "The term constitutional, as qualifying psychopath, is unfortunate, because it indicates that necessarily the condition is congenital and inherited and therefore hopeless."

⁷ Healy, *The Individual Delinquent* (Boston, 1915), p. 575. Bromberg and Thompson, "The Relation of Psychosis, Mental Defects and Personality Types to Crime," *Journal of Criminal Law and Criminology*, May-June, 1937, p. 75, say, "They are characterized by being so abnormal emotionally that they are undependable in regard to their statements, and unable to conform to the demands of conventional routine life." Schroeder, *op. cit.*, pp. 4-5, says, "Psychopathic personalities, considered in this circumscribed sense, are people who possess in comparison with the average individual too much or too little of stability, capacity for love, in strivings for recognition, temperament and response to others." He adds concerning the most dangerous of these, "They are endlessly varied in their structure. They show sometimes such excessive lack of social feeling that they seem like monsters. They form the center of the small group of the so-called moral insane. The majority...show an exaggerated desire for recognition, associated with initiative and imagination. These people, according to their characteristics and capabilities come before the courts as brutal delinquents or as highly expert criminals and swindlers.... They form the most dangerous group of habitual criminals on whom every attempt at reform, even the most modern, fails and is bound to fail."

easily induced, and the ease which they commit antisocial acts. Healy and Ziehen have noticed that often they show the stigma of physical degeneracy besides poor physical development, delayed puberty, dwarfism, infantilism, and disproportionate development of body members. Often also appear tremors, twitching of the facial and other muscles, attacks of dizziness, and defects of the special senses. Socially they manifest inability to meet the demands of social life, growing out of a feeling of impotence, although they express good intentions.

A case illustrative of this type of personality maladjustment is the following:⁸

THE H. C. CASE

H. C. was sent to the hospital through the Veterans' Bureau from Ohio because of threats against a young lady and her family. He was supposed to have followed the young lady from Washington, forcing his attentions upon her, and it was the opinion of the physician who ordered the patient here that he would carry out his threats if he escaped from the institution. When admitted here, he complied readily with the admission procedures, was courteous, conversed rationally, was very alert, and stated that his being sent here was a joke, though in one way it was serious. He claimed that he and the girl he was to marry soon had been trying for months to get hospital treatment for him, but that the Veterans' Bureau sent him from place to place, until finally the girl's family demanded immediate treatment and he was sent to St. Elizabeth's. He knew the nature of the hospital, but was willing to come because he was sure the doctors would see that he was not crazy and would give him the proper treatment. He launched into an attack upon the Veterans' Bureau for its neglect of his case and waxed quite eloquent.

According to him, his trouble consisted of spells. His left ear would begin to itch, and he then would feel pressure along the mastoid ridge which radiated to his head, causing him unbearable pain and frequently a temperature of 104° or 105°. He admitted being irritable during these spells, but refused to admit that he had ever been crazy. He pointed to a small nodule, the size of a pinhead, under the skin behind his left ear as the cause of his trouble. He claimed to have noticed this shortly after being hit with a billy by a German soldier while fighting in the trenches on the Marne. He had also received a wound in his left knee, the bullet grazing the flesh, and it had left his knee stiff. He was discharged from the army in 1919 with 25 per cent disability on account of this stiffness of the knee. He then worked as an auditor for a shipping firm and in the adjutant general's office as clerk, and finally he was sent to school to study law by the Veterans' Bureau. His pains, however, forced him to give up his studies.

Later on he stated that a woman physician who was treating him had told him a hard-luck story about one of her patients who had been wronged by another man and had worked on his sympathies so that he married the girl in order to save her from disgrace, his idea being to divorce her later on. He claimed never to have lived with his wife. Later on he found out that she was colored, and he wished to have the marriage annulled, as the Maryland law does not recognize a marriage between white and black. All he would have to do would be to prove her color. This case had been worrying him and may have contributed to his nervousness.

⁸ Karpman, "The Psychopathic Individual: A Symposium," *Mental Hygiene*, Jan., 1924, pp. 183-186.

A careful physical examination failed to reveal any pathology, and the nodule could not in any way have produced the symptoms described. It was quite evident that the patient was not truthful, that he wanted the Veterans' Bureau to get him out of certain difficulties and pay him compensation. Considerable time was spent by the hospital in investigating his many contradictory statements, which he was always able to rationalize in a very clever way, since he was naturally bright and had studied law.

It also appeared that he had met a girl, Miss S., after his marriage; that he had concealed his marriage from her and had represented to her that he was a lawyer, that his family was wealthy, and that he personally had considerable real-estate holdings. He had sent her flowers and expensive presents for which she had to pay later on. Only after she had become attached to him had she found out that he was already married and that his wealth and influential connections were imaginary. She had then decided to leave Washington and go to her home in Ohio, but he had followed her there. It was because he had told her of the spells caused by the swelling under his ear that she had tried to get him admitted to a hospital.

A reputable local attorney, Mr. X., gave the following information: The patient became known to him in the spring of 1922, when the California Fruit Company, a client of his, referred the case to him. H. C. had succeeded in cashing bogus checks in the name of the company. H. C. was at the time in jail. Upon learning that the patient was an ex-service man and because of his pleadings, Mr. X. concluded that H. C. was a victim of the war and had got himself involved through acting impulsively. Through Mr. X's influence with the district attorney, the case was nolle-prossed. Mr. X. believed that friendly confidence would help H. C. and therefore took him into his own law office, gave him a desk and helped him in his spare time. He enrolled in a law class, purchased books, and so forth. He was with Mr. X. for about one week, during which time he was not employed by Mr. X. or in any way connected with the firm, though he had cards printed in which he claimed to be associated with Judge X, and to handle ex-service men's claims. He did not, however, do any studying, and Mr. X. told him to get out. It was later learned that he married in 1921, that he met his wife on a trolley car, followed her home, and pressed his attentions. The wife was then about fifteen years of age. After that he lived with his wife's mother, who ran a boarding-house. He never contributed to the support of his wife, and his mother-in-law finally turned him out of the house.

Later on he became acquainted with Miss S. He negotiated the purchase of a high-powered car and gave a fraudulent check for \$1,000 as first payment. The car was recovered. While in Mr. X's office he eavesdropped upon a conversation with a client. Afterwards he intercepted this man, told him that he was charged too high a fee, and offered his own services, which were accepted. For this he received a considerable fee. He collected payments from a colored man who purchased a piano from Marshall Field's in Chicago. He had no authority for this, being unknown to the company. An affidavit certifying that the patient had completed two years in a law school proved to be a copy of a copy. He carried off a large quantity of Mr. X's letterheads on which he would write to Mr. X's clients, making false representations. His outstanding characteristic was great audacity. He would do the most shortsighted things in a brazen and defiant way. It was Mr. X's opinion that he never showed any psychotic symptoms. There were many charges against him in the penitentiary.

In giving his history, the patient did not mention any of his experiences with Mr. X. or the fact that he had ever falsified checks. When questioned specifically, he stated that Mr. X. was a crook, and that as soon as he found that out, he left him, that his difficulties with checks were due to his wife, who drew the money

out of the bank without his knowledge. He never had to think long for an answer.

Although when admitted to the hospital he insisted upon an operation, when he was ordered to the medical department and the surgeon was about to remove the lump, he suddenly changed his mind, saying that there was no use in removing it as some doctor had told him that it was not the cause of his nervousness.

From his brother the information was obtained that he did well at school and had had no trouble before he entered the service. The brother, however, mentioned a second enlistment in the army in 1920, during which he got married and secured his discharge on the plea of having to support his wife. The brother stated that he had always had a mania for money and liked to give the impression that he and his family were wealthy.

From the adjutant it was learned that H. C. enlisted in the army in 1916; that he sustained a gunshot wound of the left knee in July, 1918; that he was furloughed in the regular army reserve in May, 1919, and was honorably discharged in June, 1920, when that reserve was abolished; that the records did not show that he had ever been hit on the head or received treatment for such an injury, although he stated that he had received first aid.

He failed to establish his claim and was discharged from the hospital with a diagnosis of constitutional psychopathy. Following his discharge, he got into touch with relatives of various patients, made false representations, claiming that the hospital kept non-insane patients locked up, and was evidently so plausible as to get some Congressman to make an inquiry on the floor of the House concerning the hospital. Several months later he pleaded guilty in the Federal district court of Boston to a charge of raising a United States Treasury check for \$3.77 to \$53.77. He was sentenced to a year and a day in Plymouth Jail.

This patient showed no intellectual impairment; he was above the average mentally; he was bright and a very smooth talker. Physically, he was a very good specimen and showed no anomalies. He was extremely egotistic, narcissistic, and exhibitional, and his maladjustment was principally at the social level.

The psychopathic personality is still much of a mystery to the psychiatrists. They do not know whether it is produced by inheritance or by social influences, or both. If it is generated by both inheritance and by the social situation, they do not know which is preponderant. They have delimited it by saying that it lacks the characteristics of the neurotic and of the psychotic, and by describing what they think are its most outstanding characteristics. But, as we have seen, they are not entirely in agreement. What the sociologist would like to know are, (1) what proportion of criminals, or even of prisoners, are in this narrow sense psychopathic, and (2) what are the factors that produce this sort of personality. The latter is important for the penologist because only so can he know how to handle such prisoners, and to the general public because only so can we take proper measures to prevent crime by such individuals. On neither of these items have we any exact knowledge. We only know that Healy and Bronner found among their 2,000 Boston juvenile delinquent repeaters that 2.8 per cent were psychopathic personalities.⁹ In a later study by the same authors of 143 juvenile delinquents, 92 per cent had experienced major emotional disturbances,

⁹ Healy and Bronner, *op. cit.*, p. 152, and Table 47.

one-third were characterized by great restlessness or overactivity, but only one-sixth of those definitely diagnosed had what the authors call "abnormal personality."¹⁰ In the narrow sense of the term, psychopathic personality seems to have only a minor rôle in producing criminality. But if the various signs of emotional disturbance not closely connected with neurosis or psychosis are considered, it appears that a large proportion of criminals have earlier or later experienced such disturbance. From one such study, chiefly psychoanalytical in nature, it appears that only those whose "personality trends," favorable to delinquency, have been fixed early in life by their experiences in the family are subject to the deleterious influences of the social milieu. This study concludes, "... we may say that an unfavorable social situation makes it easier for the individual to displace emotional conflicts which were created in family life with reactions against the social order and to relieve accumulated disappointments and hostilities of every kind in the form of anti-social behavior."¹¹

In summary, the psychopathic personality in the narrower sense plays a part in producing the delinquent and criminal. How great a part relative to the other factors we do not know, but from the studies so far made probably a larger rôle than either the neuroses or the psychoses. This, however, may be due to the fact that this category is a sort of dust-bin into which are cast all the emotional factors not definitely identified under the other more strictly identified categories.

However, the studies so far made seem to indicate that the emotions play a greater rôle in determining conduct than the intellect. Whether the emotions channel themselves to expression in behavior in accordance with the demands of a given society or against those demands depends, it seems, on (1) the inherited constitution and (2) the experiences of the child in the home resulting in habitual reactions to those most intimate social situations. The hereditary factor we shall discuss in the next chapter. The factors in the social environment will be further discussed in later chapters.

In conclusion can we not say that, so far as the facts now available indicate, the mental factors we have discussed—mental defect, epilepsy, the neuroses, the psychoses and the personality traits of irritability, overactivity, aggressiveness compensating for a feeling of frustration of efforts for the satisfaction of fundamental needs—are of great importance in producing what we call delinquent or criminal behavior?

Our own study of 178 prisoners in Wisconsin and their brothers confirms the rôle in criminality of emotional frustration, often experienced early in their lives. Sometimes the emotional disturbance grew out of a social situation in the home that induced in the child the feeling that

¹⁰ Healy and Bronner, *New Light on Delinquency and its Treatment* (New Haven, 1936), pp. 42-47.

¹¹ Alexander and Healy, *op. cit.*, Ch. 10.

he was discriminated against. Some of the cases show that he actually was neglected, whereas a brother or sister was favored over him. But others show that he was a spoiled child and demanded more than his fair share of attention and of emotional response. In both cases the result was a pattern of reaction to the social requirements that either during childhood and youth or later in life led to delinquency and crime.¹²

Neurosis and Delinquency. Where the personality conflicts alluded to above are permitted to remain unexplored and therefore unresolved, the mental condition may evolve into one of mental illness. A group of disorders distinguished from the more acute illnesses known as psychoses are the ones listed under the heading "neuroses." Described as "persistent poor adjustments," these disorders are of the same type found in the psychoses, but are of lesser intensity.

These distinguishing characteristics are also found, again in lesser degree, among persons to whom we are willing to grant the classification "normal." One can avoid stepping on cracks in sidewalks, pick up every hair-pin he sees, wear flashy clothing, and so on, without attracting undue attention. When, however, he feels compelled to set fires to buildings, to complain constantly to the police, to strip off his clothing in public, or to behave in other atypical ways, he acquires the classification, "neurotic." Not all of the phobias, compulsions, and other neuroses lead one beyond the confines of the law, but the chances are that the persons possessed of these neurotic tendencies will so violate legal restrictions under circumstances tending to evoke such conduct. The news sheets have made certain forms of neuroses well known to the lay person, for instance, arson, kleptomania, window peeping, exhibitionism, and so forth.

The following statistical analysis of one hundred psychoneurotic as contrasted with one hundred non-neurotic prisoners in the United States Northeastern Penitentiary is suggestive of the background making for this form of abnormal behavior, although, since both groups were prisoners, this analysis proves nothing as to the bearing of psychoneurosis on criminality compared with other factors.

1. Psychoneurotics came from homes which were disrupted prior to the fifteenth birthday of the inmate in 46 per cent of the cases. This is in contrast to 25 per cent of the control group.
2. Using the ability to perform manual labor as the criterion, it was reported that only 54 per cent of the neurotic prisoners were in good health, while 73 per cent of the control group were so classified.
3. Physical defects were found in 64 per cent of the neurotics, while 48 per cent of the control group were so handicapped.
4. The neurotics were somewhat shorter and lighter than the members of the control group.

¹² Gillin, *The Making of the Wisconsin Criminal* (Madison, Wis., in press).

5. Chronic alcoholism was manifested by 13 per cent of the neurotic group, but only 3 per cent of the non-neurotic group showed this factor.

6. Recidivism was recorded in 68 per cent of the neurotics, but only in 54 per cent of the "normal" prisoners.¹³

To illustrate the nature of one form of neurosis, that of the compulsive state known popularly as kleptomania, the following anonymous account is appended to the above discussion.

November 1—I am a shoplifter; in fact, I might be called "an old offender." I cannot resist the lure of possession without payment. I pray on my knees at night, and the next day may see me at a counter waiting a chance. I have made an agreement with myself that I will stop when I reach \$25.

November 2—I came home today in high glee because I had taken articles worth \$10. This is my biggest day's work. Some of these things I really wanted, but what shall I do with this marcel net? I do not wear my hair marcelled. And I do not want this cheap ring, for I have many valuable rings.

I ordinarily have taken small things which could be covered with my palm or handkerchief or pouch bag. Today I dared to take a package nightgown and wondered why I was afraid two months ago to take a paper of needles. It is so easy.

There is the bell. I must stop to teach my psychology class, where we have the chapter on habit.... I have just returned from class and have hidden in shame the things over which I gloated an hour ago. It was a terrible strain to teach that chapter on habit and its effect on character. I shuddered at the knowledge of my double complex. How much longer will my students tell me that I have the looks of a Madonna?

November 4—I have gone beyond my \$25 limit and so shall move the goal to \$50....

November 9—I have not been off the campus for a week. I have been fighting desire, but today feel too weak to resist longer....

November 11—... Today's haul put me beyond the \$50 mark. That means, of course, that I shall fix a higher goal.

December 3—I had to go to town today, but was afraid to go by myself. So I asked one of the teachers to go with me, as I have never taken anything when with another person. Today, however, when my companion was looking at powder, I covered a small box of rouge with my glove and picked it up, without detection. I wonder why I do this thing that will ruin me. My salary of \$2500 cares amply for my present and future. Detection of my paltry thefts would mean disgrace to the school as well as to me.... yet I have the utmost scorn for anyone else who steals.¹⁴

The factors that would reveal the rôle played by habit and by personality conflict in the making of this neurotic thief are not available. It is included merely to give some indication of the manner in which this type of offender differs from the professional thief who indulges in the practice for monetary gain. In the latter case, the stealing is symptomatic of economic need, while the kleptomaniac's purloining fulfills a need

¹³ Wilson and Pescor, *Problems in Prison Psychiatry* (Caldwell, Id., 1939), pp. 120-121.

¹⁴ Adapted from *Reader's Digest*, Aug., 1937. pp. 35-36.

equally pressing but usually of non-monetary nature. This latter need is no less real and is indicative of a personality problem of such proportions that specialized assistance is ordinarily required if the person is to escape the compulsion.

Another form of neurosis that often proves to be costly to society is that of pyromania. "Pathological arson" is preferred by some because of the indiscriminate use of the term "pyromaniac" to describe all persons setting fires. It has been estimated that the losses resulting from incendiarism and arson are at least 25 per cent of the total fire losses.¹⁵ How much of this 25 per cent of the loss from fires is due to neurotic persons we do not know, for it is reasonable to suppose that some of them set fires for revenge or to obtain insurance. The person guilty of pathological arson is supposed to set the fire for the satisfaction he gets in seeing a big fire. The part played by pathological arson in the total number of those who criminally set fires is probably small.

The Psychoses.¹⁶ The incidence of the psychoses in delinquencies has been investigated at irregular intervals in the past. In a study of 608 consecutive admissions to Sing Sing in 1916 and 1917, it was reported that 12 per cent were mentally diseased or deteriorated. Of these, one-half were schizophrenic cases, over 20 per cent were suffering from syphilitic infection of the central nervous system, and another 20 per cent were suffering from alcoholic deterioration.¹⁷

Goring reports that Heron estimated that in England 4.1 per cent of the criminal population, as compared with 2.1 per cent of the general population, have the insane diathesis. Goring's coefficient of correlation of mental illness with the commission of crime suggests a high degree of correspondence.¹⁸

On the other hand, during the years 1932 to 1935, inclusive, 9,958 prisoners who passed through the Court of General Sessions in New York City were examined in the psychiatric clinic attached to that court. Of these, 153 were judged to be psychotic; this is only 1.5 per cent of the group examined.¹⁹

This finding is representative of the trend of similar studies in recent years in this country. The percentage of mental abnormalities among delinquents seems to be low. One should guard against concluding that

¹⁵ Magee, "Pathological Arson," *Scientific Monthly*, Oct., 1933, pp. 358-361.

¹⁶ Recently there have been studies of the geographical distribution of mental illness in several cities. (See Faris and Dunham, *Mental Disorders in Urban Areas* (Chicago, 1939); Queen, "The Ecological Study of Mental Disorders," *American Sociological Review*, Vol. 5, Apr., 1940). With certain of the disorders, there have been observed correlations with high delinquency rates; with others, the correlation is so low as to warrant no conclusion of a significant relationship. Consequently the evidence on the basis of these studies at present is inconclusive as to the relationship between delinquency and the psychoses.

¹⁷ *First Annual Report of the Psychiatric Clinic in Collaboration with Sing Sing Prison* (New York, 1917), p. 29.

¹⁸ Goring, *The English Convict: A Statistical Study* (London, 1913), p. 226.

¹⁹ Bromberg and Thompson, *op. cit.*, p. 75.

the small numerical representation of the psychotic delinquent is inconsequential. Some of the psychotics, especially the paranoics, are potentially dangerous at almost any period of their illness. They labor under delusions of persecution and therefore are likely to commit serious types of crime such as assault, murder, and destruction of property.

The fact that relationship of the mentally disordered to the mentally healthy is expressed by a continuum, that is, ranging gradually from a little queer to obviously insane, further complicates the task of recognizing these potential offenders.

It has been aptly said that all of the abnormal personalities found in the hospitals for the mentally ill have their counterparts on Main Street, albeit the latter are of less extreme form.

In most textbooks of abnormal psychology and psychiatry, there will be found rather elaborate, definite classifications of psychoses. Nevertheless, competent students of mental ill health, the psychiatrists especially, recognize that in actual instances the mental aberrations are difficult to diagnose and that mutually exclusive categories are largely confined to the written page. The patient may exhibit confusing, overlapping symptoms or may manifest different sets of symptoms in succession.

It is not pertinent to elaborate upon the various psychoses in this text. It will be sufficient for the purpose at hand to list briefly the major psychoses and their identifying characteristics: (1) schizophrenia (vagueness, disorganization, hallucinations); (2) paranoia and paranoid states (systematized delusion in a particular field, logical mental organization except for this); (3) depressions (sadness, self-accusation, suicidal tendencies); (4) manic excitements (overactivity with aggression, elated moods, flight of ideas); (5) deliria, generally resulting from toxic conditions (disorientation in time, place, and so on); and (6) abnormalities resulting from organic lesions, that is, in cases of senility, trauma, syphilis, and so forth. Behavior in these instances is quite varied in nature, dependent upon the amount of the damage to the tissue and the nature of the personality involved. With the exception of the last mentioned, there never has been found any reliable evidence of somatic lesions that may be said to accompany the psychosis.

Since one person in every twenty of the general population spends some of his life in a hospital for the mentally ill, it is clear that not all of the psychotic are criminals. One can deduce from this that the psychosis by itself is not the cause of the delinquencies committed by psychotics. It has been said that the principal factors contributing to criminality are to be found in the basic personality characteristics upon which the psychosis is founded rather than in the psychosis itself.²⁰ It is largely in the light of these personality factors that the psychosis eventuates in criminal misconduct.

This fact has a bearing on the question of which of the psychoses con-

²⁰ Wilson and Pescor, *op. cit.*, p. 155.

tribute most to criminal behavior. The lack of mutually exclusive categories intrudes to make any generalization of this sort a tenuous one. However, there is a consensus of opinion at present that schizophrenia bulks largest among the total number of mentally ill, as well as among the criminal insane. In his study of the Sing Sing admissions, Glueck reported that schizophrenes were the most numerous among the prisoners. In 1927, research on this question in Illinois revealed that this type of disorder constituted 40.3 per cent of the criminal insane group, and 23.7 per cent of the total inmate population of the state hospital group.²¹ In the same two groups, the paranoiacs contributed 6.4 per cent, and 0.6 per cent, respectively.²² It will be observed that the proportion of the paranoiacs who behave in a manner deemed inimical to public welfare is much greater than that of the schizophrenes, although the actual number is much less. Dunham concluded that while the schizophrenes in general show almost complete absence of delinquent behavior in their adolescent periods, during adult years, the paranoid schizophrenic shows twice the amount of crime as does the catatonic group.²³

The paranoid type of mental disorder is, for at least three reasons, charged with greater threat to life and property than some of the other psychoses. First, it is difficult to discern, since there is no general disorganization; second, if the delusion is not readily identified as such, the story of the paranoid is quite logically constructed; and third, the delusions, especially of persecution, not infrequently engender the desire to be rid of the persecutors, or to be revenged upon them, thus inviting homicide. Not all persons with delusions of persecution become violent. Many merely seek to escape from the pursuers, but when they feel that escape is impossible, may turn on the alleged threat in sheer desperation.

The depressions are potentially dangerous to life, both by way of suicide and homicide. The hopelessness of the situation leads the person to see no reason for further existence for himself, and he may seek to deliver those close to him from this fruitless existence also. This is observed in the cases where parents take the lives of their children and then commit suicide. While this may be done deliberately by rational persons who have been exposed to a series of discouraging experiences, the accompanying factor of mental depression of extreme degree is often present.

The persons in manic excitements are not so apt to commit acts dangerous to society in the same manner as the paranoid and depressed

²¹ Dunham, "The Schizophrenic and Criminal Behavior," *American Sociological Review*, Vol. 4, June, 1939, p. 356.

²² *Ibid.*

²³ *Ibid.*, p. 361. The catatonic schizophrenic is characterized by seclusiveness, submissiveness, conformity, self-consciousness, anxiety qualities, feeling of difference, and home attachment; the paranoid type of schizophrenic, however, substitutes such traits as aggressiveness, stubbornness, quarrelsomeness, suspiciousness, egocentricity, and home rebellion for the contrasting traits found in the catatonic, that is, submissiveness, conformity, home attachment, and so on (*ibid.*, p. 355).

types. However, in the realm of forgery, misrepresentation, and the like, these individuals are represented. The feeling of omnipotence that accompanies this disease makes for this form of misbehavior. Inconvenience to business houses perhaps is the most general form of disability suffered by society as a result of the activity of this type of mentally disordered person.

The mental aberrations manifested by the senile person are not as a rule associated with the most serious offenses. The form of delinquency exhibited by the seniles is generally reparable, even though it shocks the sensibilities of many of the populace. Sex offenses, often against young children, are common among the patients suffering from senile dementia. With the passage of years, there seems to be some deterioration leading to relaxation of inhibitions, which in part accounts for the acts of this sort. Such offenses are ordinarily crudely performed, and therefore easily detected. Much of the explanation of this behavior may be found in the prior experience of the person in question; deterioration is evidenced by many persons who do not indulge in conduct deemed reprehensible.

The other two forms of mental disorder do not seem to be closely associated with specific forms of criminality. They may eventuate in any type of crime depending apparently on the basic pattern of the personality.

The following cases are given in illustration of the manner in which mental disorder operates in criminal acts.

THE ARMY PRIVATE CASE

A private in the United States Army, twenty-nine years old, did well during his first three months in the army and at the end of that time was promoted to corporal. Shortly after that a change was noticed in the man. He became negligent in his duties. As a consequence he was tried finally by a summary court-martial and fined twenty dollars. He then applied for a transfer to another post, but the request was refused by his captain. A few days later, under the impression that a soldier had taken two dollars from him, he went to his room, got his revolver and five rounds of ammunition, loaded the gun, put it in his hip pocket, and started to hunt for this soldier. The day before there had been a shooting affair in a near-by town, which put the idea of shooting into his mind. While he was looking for this soldier he was told that the captain wished to see him. On his appearance before the captain the latter told him that he had been reported for overstaying a pass and furthermore that he had been seen tearing off his chevrons. The man denied both these charges and became very angry. The captain then dismissed him, but the patient tarried and told the captain that he would like to resign as a non-commissioned officer. The captain agreed and again dismissed him, with the words, "That is all." The patient drew back a pace and replied, "No, it isn't all, captain," and thereupon, drawing his gun, he shot at the captain. He missed him, but the first sergeant and company corporal started toward the man and he shot again and wounded them both. In the meantime the captain had grappled with him and, in the struggle, was shot in the neck, from which wound he died ten days later. The criminal was placed in solitary confinement and was told when the captain died. He began to develop a defense reaction that expressed itself in the belief that the

captain had only played dead and was having him held for murder in order to get even with him. This delusion persisted, in spite of the fact that from the window of the guard-house the criminal was able to see the funeral procession on its way to the cemetery. He insisted that this was a mock funeral. When he was tried by court-martial, evidence was presented that he had been peculiar for some time before the shooting. An alienist gave evidence that he was suffering from dementia præcox of the paranoid variety. It appeared at the trial that there was no reason for his killing the captain, who was a kindly, fatherly officer, well liked by his men. The criminal showed his insane tendencies by becoming incensed against his lawyer and accusing him of being in conspiracy against him.

He was sentenced to imprisonment for life and, after two years, during which time he continued to show delusional ideas, was sent to St. Elizabeth's hospital in Washington, D. C. Here he maintained that the captain was alive and displayed great emotion whenever the subject was mentioned. During the three years he was in St. Elizabeth's, there was no emphatic change in his mental condition. Subsequently, when being transferred to a State hospital near his home, after being pardoned from the penitentiary, he was taken out of the hands of the hospital attendants on a writ of habeas corpus, taken before the judge and ordered discharged because he had not been adjudicated insane in the particular county in which he happened to be at that particular moment.

Here is a man of the most dangerous character, who is a criminal because he is suffering from a mental disease, turned out by a blunder of the law to pursue his uncontrolled way.²⁴

Certain of the dementias result in other forms of crime than those of violence. White summarizes the case of a litigious paranoiac who is known in law circles of Maryland as the King of Litigants.

THE KING OF LITIGANTS CASE

A sixty-four-year-old physician, after a trial for perjury, was found guilty and, while awaiting sentence by the court, was discovered to be insane, with the result that he was admitted to St. Elizabeth's hospital in Washington in 1907.

The trial was only the last of a long line of lawsuits in which he had been engaged throughout most of his life. For at least thirty-three years he had been suing people or corporations. During that time he had obtained 1,296 magistrate's judgments amounting in the aggregate to \$127,836, besides \$2,348 in costs. In 1877 he had obtained 619 judgments against the American Express Company amounting to about \$50,000, which were later set aside by a higher court. Later, however, he obtained other judgments against the same company amounting approximately to \$1,000,000. It was his custom to locate in a community, obtain the names of various people there and secure judgments against them in magistrates' courts for various sums by default. Frequently the defendants knew nothing about the matter until judgment had been rendered. Frequently he forged documents and obtained judgments in this way. It was one of these torgeries which finally brought him to grief.

Under examination at the hospital, he evidenced a very well-organized system of delusions. For example he said that he had caused the capture and execution of a Confederate spy during the Civil War and that since that time the friends of the man had been persecuting him. He told about his \$50,000 judgment with the American Express Company and it was discovered that this trouble started

²⁴ Adapted from White, *Insanity and the Criminal Law* (New York, 1923), pp. 107-

from an original disagreement over a charge of 40 cents on a prepaid package. In the hospital he was very suspicious, kept his door closed and would scarcely talk to the physician. After about a year in the hospital, he was permitted to visit his brother in Ohio but did not voluntarily return and had to be brought back. He got into touch immediately with lawyers who filed a petition for a writ of habeas corpus. This writ was denied, both by the lower court and by the Court of Appeals. After this he began to show signs of senile deterioration and to develop grand ideas of an absurd nature. During the last few years of his life his mental condition steadily deteriorated until he finally died in the hospital.²⁵

THE PARANOIAC GERMAN CASE

A strong, healthy-looking German, who emigrated to this country some fifteen years ago, has been appearing in court either as defendant or complainant a large number of times. By his attitude, as he sits with his chest thrown out, and his voluble self-assertion one sees at once the egocentric personality. He informs us of his abilities and, notwithstanding these, his failures in business and tells us at great length of assaults made upon his person and insults offered and attempts to destroy his character. All these have emanated from his family. These relatives have a grudge against him and sneer at him and call him bad names and incite or even hire others to insult him and offer him bodily violence. This has been going on for years, with gradual involvement of various members of the family. At times he has perceived, he tells us, impending danger to himself and has assaulted others and been arrested for it. On one occasion he did not dare to do anything when his wife called him dirty names and pounded him with a stick, because his step-son sat in the next room with a shotgun. They have broken him up in business five or six times, and his store has been robbed dozens of times at their instigation.

This man talks well and makes clear statements. He does not always stick to his points, but then he has a tremendous number of them to make; he sometimes counts them off as he proceeds in conversation. He is sure that his wife is unfaithful, that he has been unfairly treated by all, and he discusses in detail the injustices done him by those who through the courts have had to do with his family affairs. He has brought numerous complaints into the courts and instigated several lawsuits. He has followed up old records, he says, and done detective work to verify the points which he suspected. He has written very numerous letters, some of them extending over fourteen pages, to various officials and presents affidavits of the truth of his allegations. He continually threatens his present wife, as he did his two previous ones. A characteristic action was shown by his buying a shotgun and shooting it off early in the morning to let others know that he possessed arms. The neighbors by taking sides with the family have become implicated in his delusions of persecution.

This man has been under observation by court authorities for years and has not shown notable deterioration. His delusions still center about his family, from which he is now parted. He does well at times in a business way, being able to make a good presentation of himself and his wares. The difficulties and dangerous possibilities of such a case are to be readily perceived and need not be enlarged on here.²⁶

²⁵ *Ibid.*, pp. 124-126.

²⁶ Healy, *The Individual Delinquent* (Boston, 1915), pp. 605-606. (Copyright by Little, Brown and Co., 1915. Reprinted by permission.)

QUESTIONS AND EXERCISES

1. In what respect do some of the insanities differ from mental defect as a factor in the making of the criminal?
2. Can the crimes committed by the insane, as in the army private case, be prevented as easily as those by the feeble-minded, for instance the Fred Tronson crime? Explain.
3. Can teachers and others having charge of children be of service in preventing the development of the mental conflicts producing delinquency? Suggest methods.
4. Suggest ways in which Edward Somes could have been prevented from becoming delinquent.
5. Of these various types of mental and emotional disturbance, which one seems to be numerically the most important?
6. Explain how social and economic conditions may affect the development of some of these disturbances.

Chapter IX

BIOLOGICAL PREDISPOSITION TO CRIMINALITY

In the preceding chapters the physical and mental factors that sometimes accompany delinquent behavior have been discussed. In this chapter let us examine some of the more or less specific evidence that has been proffered to support the theory that predisposition to delinquent behavior is transmitted in the germ plasm.

IS CRIME INHERITED?

Many of the cases presented in the previous chapters have suggested the question as to the influence of heredity on the production of criminals. Among people who have not given any particular attention to the problem of heredity it is often assumed that criminality in the ancestry is an explanation of delinquency in the progeny. This fallacy has been shared by some of the older among serious students. For example, Lombroso devotes a chapter to the influence of heredity in the causation of crime. In discussing the statistics of hereditary influence he cites a study made by himself of 104 criminals among whom seventy-one showed some hereditary influence. But he studied no group of non-criminals to ascertain whether they had criminality in their ancestors. Even had he done so, he would not have excluded the possibility that the criminals were in part the result of social factors. He cites Dugdale's study of the Jukes as "the most striking proof of the heredity of crime and of its relation to prostitution and mental diseases." This case we shall discuss at a later point.

Crime as such cannot be inherited. Crime is a biosocial phenomenon produced by a combination of the bodily and mental characteristics of the individual and the environment acting upon that responding personality. Now, a part of that personality is the result of biological characteristics inherited from the ancestors. Crime is not a unit biological characteristic. However, the natural characteristics that function in producing crime may be inherited. As a result of these characteristics, which incline the individual to antisocial acts, the individual under the proper circumstances may become a delinquent. Therefore, while it is impossible to say that crime can be inherited, it is of the greatest value to study

carefully the biological characteristics that are most closely connected with criminality in order to understand the genesis of the criminal.¹

In the main, this evidence has taken the form of genealogical histories, compiled in an effort to show that the above-mentioned thesis is a valid one. Among such studies are *The Tribe of Ishmael*, by McCulloch, *The Smoky Pilgrims*, by Blackmar, *The Hill Folk* and *The Nam Family*, under the direction of Davenport, *The Pineys*, by Kate, the *Zeros*, by Poellman, and, perhaps the two most famous, *The Kallikak Family* studied by Goddard, and the *Jukes*, reported by Dugdale and later by Estabrook.

The Kallikak Family. Goddard discovered this exceptional history in an attempt to trace the family history of a feeble-minded girl who was admitted to the Training School at Vineland, N. J. The investigation revealed the following story:

During the Revolutionary War a young man, who in the record is called Martin Kallikak, Sr., was a member of a company of soldiers stationed at a small village, where he met a feeble-minded girl and by her had an illegitimate son, known in this story as Martin Kallikak, Jr. After the close of the War, Martin, Sr., returned to his home and married a Quaker girl of good family and with her raised a family, 496 of the descendants of which have been traced. In this legitimate line all but 1 were of normal mentality. Only 2 were known to have been alcoholic; 1 was the victim of religious mania; only 15 children died in infancy; there were no criminals or epileptics and among them there has been found nothing but good citizenship. Doctors, lawyers, educators, judges, merchants, landholders, and men and women prominent in all phases of social life are found in the line descending from Martin Kallikak, Sr., and his Quaker wife. In the illegitimate line, however, the 480 descendants traced included 143 feeble-minded and only 46 normal. Thirty-six were illegitimates, 33 were sexually immoral, mostly prostitutes; 24 were confirmed alcoholics; 3 were epileptics; 3 were criminals; 8 kept brothels; and 82 died in infancy.

Equally infamous is the lineage of one Max Juke, who lived in an eighteenth-century settlement in backwoods New York State. The following account is of that family line.

THE JUKE FAMILY

The Juke family has long been infamous in this country. Dugdale in 1877 made public the results of his study of this group of degenerates. The family goes back to a man called Max, who was born somewhere between 1720 and 1740. He was descended from early Dutch settlers in New York State. He settled in a rough country about five lakes in central New York. He was a frontiersman who made his living by hunting and fishing, working hard at times but idling often, and on the whole not fond of hard or steady work. He was a hard drinker, a jolly fellow, fond of companionship, but of no particular force. He was the father of a large family, some of the children being illegitimate. Two of his sons married into what has been called the Juke family of girls. There were six sisters in this family, some of whom, if not all, were illegitimate. One of these six sisters was

¹ Lombroso, *Crime, Its Causes and Remedies* (Boston, 1912), pp. 151-166; Ferri escapes this crudeness of statement; see his *Criminal Sociology* (Boston, 1917), pp. 94-98. See Lange, *Crime as Destiny* (New York, 1930), for a study of twins who were criminals; Willemse, *Constitution-Types in Delinquency* (New York, 1932).

Ada Juke, who has become known as "Margaret, the mother of criminals." She had one illegitimate son who became the progenitor of the criminal line of this family. Dugdale traced carefully the history of 709 descendants of the Juke blood, and knew of enough others to bring the total number of progeny up to 1,200 within the seventy-five years of their history that he traced. This family furnished to the state of New York 280 adult paupers, 140 criminals and offenders, 60 habitual thieves, 300 infants prematurely born, 7 murderers, 50 common prostitutes, 440 persons contaminated by sexual disease, and 30 who were prosecuted for bastardy, who during that seventy-five years cost the people of the state \$1,308,000, "without reckoning the cash paid for whiskey, or taking into account the entailment of pauperism and crime of the survivors in succeeding generations, and the incurable disease, idiocy and insanity growing out of this debauchery, and reaching further than we can calculate."² Fortunately, a few years ago Dugdale's original manuscript, containing the real names of the people he investigated and on which his study of the Jukes was based, was discovered. Dr. A. H. Estabrook traced out the descendants of the Jukes down to 1915. The whole family of Jukes, totaling 2,094 persons, of whom 1,258 were then living, shows to that date 170 paupers, 129 who had received outdoor relief, 118 criminals, 378 prostitutes, 86 brothel-keepers, and 181 who were intemperate.³

Genealogies have not been kept in many families of normal mental endowment and of average economic and social status. The task of accurately tracing the characteristics of members of these lines of descent is not an easy one even though retarded mental growth, illiteracy, illegitimacy, and the like, do not intrude as complicating items. Goddard's statement that one goes about the task in the same manner as one would in the case of eminent men of history is not very convincing.⁴ However, granting for the sake of argument that these histories are fairly accurate, what do they reveal regarding the efficacy of the biological heritage to produce delinquents? How conclusive is the evidence that the abnormal behavior is attributable to defective germ plasm?

Certain it is that the environment surrounding the *Hill Folk*, the Jukes, and the Kallikaks is not conducive to the best of social conduct. Even the most perfect biological heritage might reflect the inroads of the disorganizing forces of the family and of the local community. It is on this point that the interpretation of the studies appears to have been weakest. While we do not as yet know enough of the interplay of these various forces to make positive counter claims, we are warranted in our statement that the evidence made available thus far has failed to establish the validity of the thesis that such family lines are degenerate because of defective biological equipment.

One thing that must be provided is an adequate control against which to project the studies of these families. One attempt to do so has been made in the case of the Edwards family. The line of Jonathan Edwards, the fire-and-brimstone preacher of New England, is replete with notables and supposedly devoid of undesirable characters. However, one finds

² Dugdale, *The Jukes* (New York, 1910), pp. 14, 15, 69, 70.

³ Estabrook, *The Jukes in 1915* (New York, 1916).

⁴ Goddard, *The Kallikak Family* (New York, 1912), p. 14.

upon further investigation that the progenitors of the stock were not so free from the taint of delinquent behavior as is sometimes presumed. Elizabeth Tuthill, grandmother of Jonathan, reported quite favorably in certain records, is revealed in another light elsewhere. No less an authority than Charles Davenport tells us that "In 1691 Mr. Edwards was divorced from his wife Elizabeth Tuthill, on the grounds of adultery and other immoralities. The evil trait was in her blood, for one of her sisters murdered her own son, and a brother murdered his own sister."⁵ This furnishes no conclusive proof that "blood will tell"; it is merely a reflection of popular belief, but it is illustrative of the pitfalls awaiting the biologically minded genealogists. If the thesis supported by the stories of the Jukes and the Kallikaks is at all sound, the Edwards line should have a component of criminals approaching those of the former families.

Furthermore, in certain environments, delinquencies escape the eye of the authorities or are dismissed without the discomforting experiences that usually attend such atypical behavior. In this way, the criminality of the "good families" is unrecorded, and the genealogies remain unblemished. Professor Edward H. Sutherland reports that over a period of several years 98 per cent of the students in his university classes have reported that they were at least mildly delinquent in childhood, engaging in petty pilfering and in some cases in very serious thefts.⁶ Most of these delinquencies were performed under environmental circumstances that permitted excursions into the realm of unsanctioned behavior without concomitant disorganization taking place. In these instances the social heritage was more than able to compensate for whatever deficiencies may have been present in the biological heritage.

Twins and Criminality. Another approach to the problem has been to study twins who have exhibited criminal tendencies. One such study reports that of thirty-seven monozygotic pairs of twins (assumedly from the fertilization of a single ovum) both members were offenders in twenty-five of the pairs. In twenty-eight pairs listed as "probably dizygotic" (from the fertilization of two ova) in only five pairs were both members offenders.⁷ An earlier study by Johannes Lange revealed somewhat similar results. In ten of the thirteen pairs of monozygotic twins both members had been offenders; in only two of the seventeen dizygotic pairs of twins were both members delinquent.⁸

Montagu has compared five such studies, four from Europe and one from the United States. This comparison shows that of the one-egg (monozygotic) twins 67.3 per cent were "concordant" in their conduct, that is, were similar in the commission of one or more crimes, while

⁵ Reported in Darrow, "The Edwards and the Jukeses," *American Mercury*, Vol. 6, Oct., 1935, p. 149.

⁶ Sutherland, *Principles of Criminology* (New York, 1939), p. 112.

⁷ Rosanoff, Handy, and Rosanoff, "Criminality and Delinquency in Twins," *Journal of Criminal Law and Criminology*, Vol. XXIV, Jan.-Feb., 1934, p. 928.

⁸ Lange, *Crime and Destiny* (New York, 1930), p. 46.

32.7 per cent were "discordant," that is, one had committed crime and the other had not. Of the two-egg twins (dizygotic) 33 per cent were "concordant" while 67 per cent were "discordant." Thus in criminality the one-egg twins had about twice the percentage of concordant behavior as the two-egg twins. At first sight this appears to show that heredity is very potent in behavior. But, if so, it is difficult to answer the question as to why the assumed hereditary factor did not manifest itself in one of the members of the one-third of the one-egg twins whose conduct was discordant. Nothing could better indicate that, while heredity does without question play a part in human conduct, even in the case of identical twins social influences modify behavior.⁹

While these studies are interesting, and *may* indicate that there is a predisposition to maladjustment carried in the germ plasm, they also show that social factors may overcome hereditary trends. In the words of one of the researchers in this field, "This delinquency in both members of monozygotic pairs of twins in itself is, of course, not conclusive of anything. It simply means that where we have similar heredity plus similar environment, then the behavior also may be expected to be similar."¹⁰ For this reason, no further discussion of the above reports is warranted.

In these genealogical investigations, and in the study of delinquent behavior in twins, there has been tacit suggestion of a non-specific, nebulous predisposition to maladjustment. For a number of years specialists in the field of personality problems have, in their attempts to classify abnormalities, recognized the need to include a category of miscellany. That the behavior of individuals cast into this class has been attributed to defective genes is obvious in view of the designations assigned to them. "Moral imbecile," "psychic constitutional inferior," "constitutional psychopathic inferior," "constitutional inferior," and so on, have at different times and in sundry places enjoyed popularity. At present, "psychopathic personality" seems to have gained the floor. Is there any evidence that the "psychopathic personality" is determined by the germ plasm?

PSYCHOPATHY AND CRIMINALITY

"The term *constitutional*, as qualifying psychopath, is unfortunate, because it indicates that necessarily the condition is congenital and inherited and therefore hopeless."¹¹ The condition thus labeled is not marked by definite, consistent characteristics. In general, it is one of emotional imbalance wherein perversity, lack of "social conscience," irresponsibility, egocentricity, instability, and so on, are present in such a

degree that normal adjustment is rendered difficult, if not impossible. The concept of psychopathy is not easily defined, as is shown by the difficulty psychiatrists experience in determining which individuals are psychopaths. It has been charged that psychopathy is a category in which to place the personality deviants that cannot be pigeonholed elsewhere. The difficulty of diagnosis of psychopathy is indicated by the wide variations in the number placed in that category by the psychiatrists at different prisons. Diagnosis of incoming criminals as psychopaths varied from 10 per cent in New York and Massachusetts, 14 per cent in the United States Northeastern Penitentiary, to more than 75 per cent in Illinois, one estimate running as high as 88.3 per cent.¹² "The concept of psychopathic personality is reserved for those whose exaggerations of emotion are not only beyond the individual's control but are unmodified by present methods of treatment."¹³ This personality abnormality has been divided into types in various ways, but it is not pertinent to elaborate further in this brief discussion.¹⁴ Undoubtedly, future research will enable the student of personality problems to refine this classification and to abandon the catch-all file now known as "psychopathic personality."¹⁵

Now, have the psychiatrists any evidence as to whether the "psychopathic personality" is the result of heredity alone, or that those who develop psychopathy have an heredity different from those who do not? We cite only a few authorities in order to show that those who are most familiar with this type of personality are not agreed as to the part played by heredity in their development. Bleuler, the Swiss psychiatrist, is inclined to the opinion that hereditary predisposition plays a part in the psychopathies but that the hereditary tendency depends on external circumstances to bring it to expression in antisocial reactions.¹⁶ William Healy, an American psychiatrist, likewise is inclined to credit heredity with a considerable rôle in producing criminal conduct. However, he insists that a person with such heredity develops antisocial behavior only under favoring conditions.¹⁷ Williams and Pescor, while admitting that the evidence is not conclusive, believe that the psychopathic personality always has as a constituent element a certain type of heredity. What that type is they do not say.¹⁸ On the other hand, another American psychiatrist, Edward J. Kempf, rejects the notion that heredity is

determinative of criminal conduct. He believes that the external conditions are prepotent in determining behavior.¹⁹

On the basis of present knowledge we cannot say that heredity plays a determining influence in producing criminality. Neither can we deny it. All we can say is that it seems that both heredity and external influences play a part in producing human behavior, normal as well as criminal, with now one and then the other prepotent.²⁰

It is desirable to keep in mind that these individuals who are now grouped under the heading "psychopath" present a very difficult problem however their behavior be accounted for—whether by social experience, or by defects in the germ plasm. It is as reprehensible to deny their existence as it is to believe that classification is tantamount to explanation. But that they constitute any large proportion of criminals is improbable.

ILLUSTRATIVE CASES

Space does not permit us to provide cases illustrative of each of the points just cited. The cases that follow are sufficient to indicate how some of these characteristics are carried through heredity, social and biological, from parent to child, sometimes resulting in the same kind of delinquency for the child as is to be found in the parent.

"THE AUTOCRAT"

The case of "the autocrat" illustrates how certain characteristics, handed down from parent to child, and acted upon by social conditions, result in delinquency. The autocrat at the age of seven was the leader of a band of young toughs who terrorized his neighborhood. For much of the time of three years he lived in the streets, engaged in fights, gambled, and picked pockets. He had a violent temper and, when enraged, hurled the thing nearest at hand at the one who had provoked his wrath. At ten his petty thefts became serious thievery for which he was finally taken to the juvenile court by neighbors. He was always in fights, determined to have his own way at all costs, and bullied younger and weaker children. In school he was a great truant and very impertinent to his teachers. He was three years behind his grade. At home his parents could not control him. He used bad language and beat the younger children.

When he was studied by the authorities it was found that his height and weight were normal, that he was well-nourished, and that his health was quite normal. Physically he had good development. He had a proud bearing and was a perfect specimen of boyhood and very handsome.

His mental examination by a psychiatrist showed an intelligence two years above normal. However, he was shown to be neurotic, and his family history revealed a poor hereditary basis for character. While he had good mental ability, he had no control.

His personality traits were cleverness, keen intellect, and good general ability, on the one hand, and irritability, cruelty, obstinacy, viciousness, vanity, audacity,

and an overbearing attitude on the other. When we study his father and mother we can see the hereditary background of this antisocial boy.

His father was without education or training for any occupation or trade. He was shiftless, quarrelsome, and neurotic. For nearly twenty years he had made no attempt to provide for his family and for about that length of time had been supported by the local benevolent organizations. He had no idea of moral right, showed a vile and disagreeable temper when thwarted, often using obscene language in the presence of his children. He was irreligious, would not listen to counsel or advice, and had practically no friends. His brutality and cruelty to his wife and children were notorious in the neighborhood. Consequently, he was despised and hated by the neighbors. He threw bodily out of the house a social worker who had called. Complaining of poor health, he was examined and found to be in good health. He was a great liar and fabricator of preposterous stories.

The mother of this boy was a weak, sickly woman with a tuberculous history. The tendency to tuberculosis seems to have been in the family for at least a generation, as is indicated by the death of two brothers recently from that disease. Twice she herself was confined in a sanatorium for the tuberculous.

She showed little interest in her children and is described as a moral weakling, completely dominated by her husband. Physically she must have been an attractive-looking woman, although now she is faded and worn. In spite of his brutality, she has always been faithful and devoted to her husband.

The other children in the autocrat's family show very much the same personality characteristics, with certain variations. The oldest brother, for example, while he has no definite record of juvenile misdeeds, ran away before he was sixteen. After repeated wanderings, he finally completely disappeared. The second brother was very much like the oldest one. He also developed a tendency to run away but fortunately joined the Navy very young. He had a juvenile court record. A third brother was mentally defective and died at the state institution for the feeble-minded. A younger sister is hysterical, tuberculous, and as selfish as the autocrat. She was in the same institution as the autocrat and was a very difficult pupil. The youngest brother was also taken into the institution at the age of eight. He was tuberculous but mentally normal. A younger sister was also put into the institution at a very early age. She is described as normal physically and mentally. The youngest sister, a baby, is apparently normal.

This boy's early history shows that when hardly more than an infant he displayed the ungovernable temper of his father. His quarrelsomeness, irritability, obstinacy, selfishness, and brutality constituted the chief problems for the institution in which he was placed, after running away from the reformatory to which he was first sent.²¹

THE SAMUEL ANDERS CASE

Samuel Anders, a little over fifteen years of age, was born in the United States of an American mother and of a father whose birthplace is unknown. The police in Portland, Me., arrested him as a vagrant. He was, however, a Boston boy and so came under the eyes of the Judge Baker Foundation. A social agency in Boston had had great difficulty with him for a number of years.

The boy was an illegitimate child. Nothing was known about his father. Sam's mother was a rather rough and wild young girl, fond of company and lazy. She attended public school until fourteen and was a good student. She then left school and began to work in a mill, but on account of dislike for the work left it and took up housework at Gloucester. When twenty years old, she

²¹ Adapted from Drucker and Hexter. *Children Astray* (Boston, 1923), pp. 219-224.

returned to her mother with a young baby. After finding a foster home for the child, she returned to Gloucester, married a man named William Gilkey and took the baby home. Gilkey was cruel and abusive and deserted her three years later just before a second child was to be born. Shortly after, she died at the home of her mother, before the second child was born.

Sam remained with his grandmother for a time and then was placed in various homes. Usually he was returned to the placing agency because of misbehavior or because it was felt that the home was not a proper place for him. From that time until he ran away from the home of an uncle who had become his guardian he was in seven different homes. It was from the last one, his guardian uncle's, that he ran away to Portland where he was arrested.

As a baby he seems to have suffered from rickets and possibly also from congenital syphilis. However, he became quite healthy, although as late as 1915, in a physician's office, he had some kind of attack that the physician felt might be due either to epilepsy or chorea.

The records report him as dirty and slovenly about his person, sometimes offensive in his household habits. The families had great difficulty in getting him to wash, and he had very disgusting table manners. He was a restless sleeper and had a very ravenous appetite, especially for meat. He had learned bad sex habits from a boy in his first foster home. In his early childhood he was extremely fond of tearing things to pieces. At thirteen he joined the Boy Scouts and was very proud of his membership. He was exceedingly fond of motion-pictures, spent much of his time reading, especially Jesse James stories, and was fond of dressing up, making soldier caps out of newspapers or his aunt's old hats. For years he was going to be a sailor. He had a good voice, and for a while he was a member of a church choir, until his conduct made him a nuisance. He was not fond of organized athletics, never went swimming, but was fond of rowing. He showed very little interest in girls. At one time he delighted in making up yarns. When younger, at about the age of thirteen, he was the leader of a crowd of boys that met in a cellar and associated with a bad lot in the neighborhood. As far as the records show, he had no special chum and was not influenced particularly by any other boy.

At school he did fairly well in some studies, in others poorly. He was lazy, and after the first year his marks for conduct were poor. After reaching the sixth grade at twelve years of age, the next year he was demoted to the fifth grade. In the midst of the term he left school and worked in a mill for a short time at \$5.00 per week as a cleaner, but was discharged because of unsatisfactory work. His longest term of employment was five weeks. Delinquency was developing throughout all this period; it consisted chiefly in destroying things and lying.

Physically he is small but seems older than his years because of the maturity of his features. His attitude is slouchy and listless, his voice low and unenergetic. There are various other signs of some physical abnormalities. He was over-developed sexually, and there was noticed a slight tremor of the outstretched hands and sometimes a quiver of the upper lip. He complained of occasional sharp pains in the temples and colors at times appeared before his eyes. Other physical characteristics seemed normal, except the shape of his head and face, which showed certain stigmata which may possibly have been the result of rickets and syphilis early in his life. The tremor of his hands and quiver of the upper lip may indicate somewhat of a neurotic make-up. His slouchiness, listlessness, and weak voice the examiners believe indicate poor physical control.

The psychological examination showed an intelligence quotient of 96; therefore he was well within the group of the mentally normal.

In his personality traits we find some indications of his difficulties. Say the

examiners. "Though we find facts enough to warrant our belief that he is neither a subject of any definite mental disease nor mentally defective according to psychometric tests, yet we are forced to think of him as a person who shows behavior tendencies or traits which mark him as a very unusual personality. He shows these behavior reactions in spite of much incentive to conduct himself otherwise; he shows them under good conditions of home life, quite apart from any question of poor companionship and there is not the slightest reason to believe that they are resultant from mental stress and worry. In other words, there is not enough in his life situations to account for his attitudes and conduct; a very large factor must undoubtedly be his own bio-psychological organism, his personality make-up." They continue, "Sam's heavy indulgence in unfortunate habits chiefly betokens his native lack of the usual amount of power to control his own physical impulses and temptations. The type of delinquencies that he engages in are, on the whole, rather childish and weak, and with regard to them he does not show manliness even in the boyish sense of the word.

"This is a picture that belongs to a well-known type; Sam shows chronic abnormal social and mental reactions to the ordinary conditions of life on the part of one who cannot be classified in any of the groups of the insanities, neuroses, or mental defectives. He belongs to the group of the constitutional inferiors; some authors would say that he shows signs of constitutional psychopathic inferiority." ²²

These cases afford one an excellent opportunity to observe the interplay of biological and social factors in the development of delinquent behavior. They render more meaningful the statement that all behavior is biosocial in nature. They also bring into bold relief the complexity of the problem confronting one who attempts to determine which of the two factors is more effective in the particular situation. It is quite possible that there are predispositions handed down in the germ plasm that make for general maladjustment to the normal world of events. (We see no need to quibble over the oft-raised point that the term *maladjustment* is a misnomer, since we all make "adjustments" to whatever circumstances are present; the above discussion of the relativity of influencing factors should obviate this criticism.) However, one cannot with accuracy reason that because parents and children exhibit the same physical and personality characteristics, *ergo*, these characteristics are transmitted biologically. The social environment in which the children found themselves, in the case of the autocrat, for example, provides ample explanation for the deviations in conduct. This explanation is deduced from the situation on the basis of our present knowledge of the formation of habits in childhood. Here again, one must avoid dogmatism regarding the efficacy of the social surroundings, disregarding the possibility of a significant organic factor being operative in the misconduct. The exercise of caution is essential in any interpretation of behavior such as that exemplified by these cases.

We must not forget that the hereditary influences work themselves out in a social environment. While we attempt to study the various factors

²² Judge Baker Case Studies, Series I, Case 10

that make the criminal, we must remember that crime is the product of a number of complex influences. Says Guyer: ²³

Beyond doubt a considerable portion of crime and degeneracy is due in large measure to innate inclination, but with just as little doubt much is the effect mainly of vicious habits acquired through an unwholesome environment. A normal appetite or impulse may be given a pathological trend by bad influences. And one has to reckon, moreover, with degrees of hereditary aptitude to crime. Just what is the measure of normality? To what extent, by developing to their highest point certain inhibitive or opposing tendencies, can we counteract certain inherent proclivities for wrong-doing? By what means shall we sift the congenital defectives from the victims of suppressed opportunities? These and kindred questions confront us at the very outset of our studies of crime and delinquency. It is obvious that although we may institute the strictest elimination of the socially unfit, unless we can provide a wholesome environment for the fit lapses into unfitness are sure to recur.

Another leading biologist, H. S. Jennings of Johns Hopkins University, points out that while on the whole in the delinquent groups of individuals the combination of genes in each have a larger number of genes relatively defective, yet the same sets of genes found in the dependent or delinquents groups would in other combinations result in socially well-adjusted personalities. In particular cases, he adds, the substitution of "better genes for poor ones would improve the situation." But likewise providing more favorable social conditions would also improve the outcome. His considered judgment is that if all the stupid, delinquent, or criminal individuals who have combinations of genes that tend to produce criminality were prevented from propagating, it would result in only a small difference in the number present in the next generation. In the long run it might help some. However, he concludes that changes in the social situation—better methods of handling infants, changes in educational methods, in traditions, customs, ideals, economic conditions, and in social organization—hold greater promise than direct methods of trying to change the genetic constitution of any given population.²⁴ Even Davenport, formerly Director of the Eugenics Records Office of the Carnegie Institution, agrees with that opinion.²⁵

Much more study must be devoted to just how inherited constitution is related to conduct, what genes, and what combination of genes have a decisive influence in human behavior, and just how certain combinations of genes respond to different combinations of social situations, before we can determine what specific part heredity plays in criminality. However, even now what little is known about the inheritability of certain diseases and defects is of use to the social worker, the educator, and the penologist.

²³ Guyer, *op. cit.*, pp. 263-264. On the difficulties of the negative eugenic program see Jennings, *op. cit.*, Ch. X.

²⁴ Jennings, *op. cit.*, pp. 244-246.

²⁵ Davenport, "Crime, Heredity and Environment," *Journal of Heredity*, Vol. 19, pp. 307-313. See also his earlier *Heredity of Constitutional Mental Disorders*, Bulletin No. 20, Eugenics Record Office, Carnegie Institution of Washington, Cold Spring Harbor, Long Island (New York, Oct., 1920).

A history of criminality, of stupidity, of nervousness, or of any of the forms of neurosis or psychosis in a family is a warning that special study must be given to the personality in order to discover how these elements in the ancestry may throw light on the genesis of atypical conduct in the case to be handled. They also indicate what social measures should be used to correct habits and ideals. Thus, while biological heredity should not be ignored, it should not serve as an alibi for a do-nothing program on the basis that since "it is in the blood" no social treatment can avail to correct the behavior.²⁰

QUESTIONS AND EXERCISES

1. Why cannot crime be inherited?
2. What further facts would you have to know about the Juke family to make it "the most striking proof of the heredity of crime"? In the Kallikak family?
3. Dugdale in discussing the Jukes said that crime appeared in those branches of the family that married into a more vigorous strain. What bearing does that fact have upon the hereditability of crime?
4. How would you answer the argument that the "autocrat" family shows the influence not of heredity but of social environment?
5. Which is the more immediately promising, the program of the eugenicist or that of the social engineer?
6. Outline a program for the prevention of the crime due to the inheritance of characteristics that make for criminality.
7. Assume that in the study of single-egg twins, it appeared that in every case the criminal behavior was concordant; could you then draw the conclusion that heredity was the dominant factor in producing criminality? Why?

²⁰ For a good account of the methods applied to a group of difficult children in Boston see Healy, Bronner, Baylor and Murphy, *Reconstructing Behavior in Youth* (New York, 1929), Ch. 9.

Chapter X

ECONOMIC FACTORS

What bearing have economic conditions upon criminality? In answer to this question there has been much speculation and some research. The gamut has been run from the Marxists to the eugenisists, but sound data from which to draw even tentative conclusions are conspicuously rare. Our newly gained allegiance to objective research provides the basis for the operation of equally new research techniques, which should eventuate in more satisfactory data in the future.

METHODS USED TO DETERMINE THE RELATION OF ECONOMIC CONDITIONS TO CRIME

Early in the study of the relation of economic conditions to criminality more or less haphazard methods were used to determine the relationship. In the latter half of the last century various European criminologists began to attack the problem with greater exactitude.

Six different methods have been used in recent times in the endeavor to measure the relationship between economic factors and criminality. These are (1) comparison of seasonal fluctuations with crime rates, usually measured by convictions; (2) study of the trade cycle in connection with convictions; (3) research on the economic status of committed persons; (4) investigation of the occupational distribution of criminals; (5) study of early employment and juvenile delinquency; (6) study of professional criminality.

It is clear that (3) and (6) are special studies in the general field of the relationship between economic conditions and crime. The others are an attempt to correlate changes in economic conditions with the crime rate.

1. **Seasonal Fluctuations.** Since the days of Lacassagne a number of criminologists have constructed what they call crime calendars. In these calendars they set down the number of crimes committed during each month of the year. Lacassagne, with such a calendar based upon the seasonal distribution of crimes against property in France between 1827 and 1870, reduced to the basis of an equal duration of 31 days each month, found that the months with the highest numbers of convictions committed between 1827 and 1870 were December, January, November,

February, October, and March. The numbers of convictions in the remaining months were lower.

Similar studies were made in other countries, demonstrating that crimes against property increased from the hot months to the colder months. The fundamental underlying factors were the economic conditions. The lessening of employment in the cold months, the greater pressure of economic need, and the higher cost of living all played a part in explaining these phenomena.

2. The Trade Cycle and Criminality. Much more important than the research done on seasonal fluctuations of economic conditions are the studies that have been made of the relation of the trade cycle to the commission of crimes. Poletti, the Italian criminologist, endeavored to measure commercial activity in connection with criminality. He tried to show that crime increases with the lessening of commercial activity.

Efforts have been made to ascertain *whether there is a correlation between the rate of criminality and the price of some of the staples of life.* This has been done on the theory that if crime increases with the price of the staples, economic conditions have caused this increase. La Fargue, for example, took the annual number of failures as a measure of comparative economic conditions in a number of years. He also traced the curve for the price of flour. With these he correlated crimes against property, with the result that he showed a close correspondence. Many other students of the question have made similar studies. Bonger has reviewed very carefully the literature of the economic causes of crime made by students of the question in different countries of the world. In almost every case a parallelism between need as measured by the increased prices of commodities or by industrial depression and crimes against property has been easy to show. With the industrialization of a country the correlation between grain prices and crime showed less parallelism. Later studies tend to substitute a composite index based upon a number of economic factors. Thus Ogburn and Thomas correlated a composite series of economic events with convictions from 1870 to 1920 in the courts of New York. In this study only total offenses and offenses against the person were used. Total offenses showed a coefficient of -0.35 .¹ Crimes against the person showed a coefficient of -0.12 ± 0.09 .² A study of murders in Pittsburgh, Pa., showed that they increased during the post-war and boom years of the 1920's and diminished during the depression of the 1930's.³ Thomas used a similar composite index in her study of British criminal statistics in relation to the business

¹ Ogburn and Thomas, "The Influence of the Business Cycle on Certain Social Conditions," *Journal of the American Statistical Society*, Sept., 1922.

² Ogburn, "The Fluctuations of Business as Social Forces," *Journal of Social Forces*, Jan., 1923, p. 76.

³ See Lunden, "The Murder Cycle and the Business Cycle," *The Federator*, Federation of Social Agencies of Pittsburgh and Allegheny County, July, 1940, p. 154.

cycle.⁴ The study showed a negative coefficient of correlation of -0.44 between property crimes with violence between 1857 and 1913 and her composite index measuring changes in the business cycle. For property crimes without violence the coefficient was -0.25 . Total indictable crimes in this study also gave a figure of -0.25 . In both studies total offenses were made up largely of property offenses. Both indicate that as business conditions improve crimes against property decrease.

These investigations have been much more carefully made than the earlier ones endeavoring to correlate the prices of basic commodities or prices and wages with the crime rate. Some of the later investigators (for example, Ogburn and Thomas) have discriminated between property crimes and crimes against persons. This discrimination is necessary, since it appears that there is a higher degree of association between property crimes and economic depressions than between economic depressions and crimes against the person.

Other figures that have not been thoroughly tested seem to indicate that there is a rather close association between prosperity and drunkenness and crimes of violence. Tarde's contention in this connection is that the large percentage of criminals in cities is not due to the commercial development of the cities so much as to the madness of luxury there to be found and to the unjust distribution of wealth and the inefficient direction of productive activity. He also argues that the economic factors that affect the problem of crime are transformations in the economic state of society. He cites crises and other sudden disturbances such as follow new inventions as instances of such transformations. These conditions make it impossible for the working class to satisfy their needs, and the unequal distribution of wealth, which in such crises becomes apparent, excites the cupidity of both the rich and the poor. Garofalo agrees with his view of the matter.⁵

A concomitant phenomenon of the depressions is the increase in *unemployment*, particularly among the laboring classes. It has long been assumed by scholar and layman alike that work is a safeguard against delinquency. Tarde has said that "work is in itself the enemy of crime!"⁶ Bonger has argued that alcoholism is one of the potent crimogenic forces and that unemployment often leads to alcoholism.⁷ Hypothetically, and the study of a good many cases suggests the hypothesis, the loss of status and the irritability excited by unemployment, rather than need itself, lead to crime. Loss of the morale created by economic independence,

⁴ Thomas, *Social Aspects of the Business Cycle* (New York, 1925). For a rather exhaustive citation of pieces of research on the relation of economic conditions to crime see Thorsten Sellin, *Research Memorandum on Crime in the Depression*, Social Science Research Council, Bulletin 27 (New York, 1937).

⁵ Tarde, *Penal Philosophy* (Boston, 1912), pp. 389, 390; Garofalo, *Criminality* (Boston, 1914), pp. 150, 156, 157.

⁶ Tarde, *op. cit.*, p. 383.

⁷ Bonger, *Criminality and Economic Conditions* (Boston, 1922), p. 108.

which loss often follows unemployment for a long period, is a demoralizing experience to any one. To the weak character, or to the aggressive personality, that loss or status breaks down respect for property.

A writer on unemployment in the United States just after World War I, in a work giving the results of the President's Unemployment Conference, says that the effect of unemployment on the worker is that if he is weak he falls into despair, while "if his personality be strong, on the other hand, he seeks mental compensation for his wounded pride, and the incessant rebuffs of job-hunting. He finds it in refusing to accept society's code of conduct. He becomes a rebel."⁸

When, however, we seek for statistical studies, based either upon large numbers or upon case studies, of the direct or indirect relation of unemployment to crime, we find that very little has been done. The hypothesis is that unemployment leads to demoralization. It may be true; it is what we should expect. What are the evidences for the supposition?

Certain facts concerning the occupation of inmates in penal institutions suggest that some of them got into trouble because they had no jobs. For example, the census figures on prisoners committed to prisons and reformatories in the United States during the first six months of 1923,⁹ numbering 19,080 committed to institutions in 1923, on 16,254 of whom there were definite data as to employment, show that 31 per cent were unemployed. But no comparison was made with the percentage unemployed among non-prisoners.

In 1915 a study of the relation of criminality to unemployment was made in twenty large cities. It was found that burglaries increased during 1914, a time of high unemployment, 30 per cent over the number in 1912; vagrancy, 51 per cent; robberies, 64 per cent; and mendicancy, 105 per cent. Divorce and suicide rates likewise increased. Social workers during that crisis cited many cases of men who had failed to get help or work and who left the office saying that they were going to commit some crime that would get them sentenced to prison where they could get enough to eat. The secretary of a temporary lodging-house at Little Rock, Ark., said, "Hundreds offered to work for their board rather than tramp or beg, while a few becoming desperate asked to be locked up and when refused stated frankly their intention to violate the law that they might be imprisoned."¹⁰

The National Commission on Law Observance and Enforcement (Wickersham Commission) had a study made on the relation between employment and crime in Massachusetts. This study found a rather consistent relationship between unfavorable economic conditions and the more frequent occurrence of certain types of crime in Massachusetts.

⁸ Rice, *Business and Unemployment* (New York, 1922), p. 108.

⁹ *The Prisoners' Antecedents*, Bureau of the Census (Washington, D. C., 1929), Table 23, p. 35.

¹⁰ *American Labor Legislation Review*, Nov., 1915, p. 491.

Unemployment appeared to be a rather important causative factor in vagrancy and crimes against property. Its influence upon other offenses was comparatively slight. Similarly, a very brief study of the connection between employment and crime in New York State made by Van Kleeck, indicates a relationship there. Van Kleeck concludes: "The close concurrence between increases in crime, particularly against property, and depression in business or employment shown both in Massachusetts and in New York, measured also against the business conditions in the whole country, . . . is the more remarkable when we realize that the annals of business are even less complete than the records of volume of crime."¹¹

A study made for the National Commission on Law Observance and Enforcement, based upon a sample of 300 admissions to Sing Sing during the twelve months ending February 28, 1930, shows the following facts:

1. Either in the last position held or in previous positions practically every main branch of economic activity was represented.
2. More than one-third of the group were employed in the process of a trade or business, while about one-sixth were laborers, porters, and cleaners in various industries. Next in numbers came those engaged in delivery and trucking, chauffeurs, and drivers' helpers. It is apparent, therefore, that in this group these men were not predominantly unskilled but rather were almost a cross-section of the general population in the area from which the inmates of Sing Sing come.
3. Of these men 52 per cent were out of work at the time of the commission of the crime.
4. Unemployment is a circumstance present in a majority of the cases of men committed to Sing Sing. It is clear that in these cases a larger proportion of the men admitted had been out of work than the percentage of unemployed wage earners as a whole.
5. Of those who committed robbery, 50 per cent were unemployed at the time of the crime; and 45 per cent of those who committed property crimes, while only 25 per cent of those who committed other than property crimes, were unemployed.¹²

In England the situation is somewhat different. Hobhouse and Brockway report that of the prisoners in England in 1913 only 5.3 per cent had no occupation, while 60.6 per cent were laborers, a term that indicates all unskilled and semiskilled laborers.¹³

A more recent piece of research in the United States, drawing its data from figures for the nation as a whole and also for six local governmental units, provides us with conclusions that are counter to those previously reported. Some hint of the reason for these differing statistics are included in the excerpt given below. The period studied covers the years of 1926 to 1934, inclusive.

1. There has been no increase in crime at all commensurate with the extent or duration of the depression.
2. The majority of crime indexes reflect gradual increases up to or through

¹¹ National Commission on Law Observance and Enforcement, No. 13, *Report on the Causes of Crime* (Washington, D. C., 1931), Vol. I, pp. 259-320.

¹² *Ibid.*, Part II, pp. 193-218.

¹³ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p. 7.

1932, with quite general decreases since that time. None of the indexes show any sudden increase in crime with the onset of the depression.

3. There has been no great or sudden increase in crimes against property as a reaction to the widespread loss of economic status associated with unemployment and relief.

4. The American people appear to have changed relatively little in respect to the kinds of behavior usually called crime, despite the widespread demoralization and disorganization of individual lives and of community activity so intimately associated with the depression.

5. Repeal of prohibition and the changing policies connected with relief are complicating factors that may color the picture in unknown ways.

6. As criminal statistics increase in accuracy and usefulness in providing larger groups and longer periods for comparisons, the fact that criminal activity appears relatively constant becomes clearer and clearer. Crime "waves" are now and probably have always been products of newspaper headlines. Even a serious depression appears to produce no "wave" of criminal activity.¹⁴

The interpretation given by the author appears to be quite tenable, particularly the factor of modified relief policies. The desperation attending unemployment in the days when private relief held sway is largely lacking to-day. The horns of the dilemma have become less sharp since the stigma formerly attached to the receiving of relief has waned.

However, even though unemployment no longer means privation as in other eras, the discomfort associated with the lack of work still plagues many personalities. More adequate relief measures have not erased the feelings described by Whiting Williams, who studied conditions and the plight of the unemployed at first hand in 1920. His findings are worth studying in connection with this problem of demoralization from unemployment. They are too long to receive more than brief mention. He says, "It is impossible to lay too much emphasis on the way in which men come into what we think are strange ideas and strange feelings as the result of the lack of a job, the irregularity of a job, the unsteadiness of a job, the insecurity of a job." He points out that we are wrong if we think that the job is simply a matter of bread and butter. The biggest factor in the work, he thinks, is that employment offers them the chief basis for their self-respect and that unemployment destroys this self-respect.¹⁵

Another method of studying the relationship between economic conditions and crime is by *comparing the fluctuations in the commitment rates for crimes against property with rates for other types of criminality*. This procedure is based upon the theory that crimes against property are due chiefly to the desire for gain and therefore are economic crimes. It can be shown without great difficulty that this assumption is not always true. There are a number of these so-called economic crimes that are due

in part to factors other than economic necessity. The desire for social prestige may be the dominating motive in a crime against property. For example, the embezzler may not be in dire want, but he may desire to get rich quickly or to have a standard of living, in order to obtain social prestige, that is much beyond his ability to pay for with his present income. Also, mental abnormalities may play important parts in instigating crimes of this nature.

A number of European students of crime have attempted to make studies of this kind. Fornasari di Verce¹⁶ undertook such a study in Italy, in Great Britain, and in New South Wales. The conclusion of his study was that economic pressure and economic changes tend to increase crimes against property out of all proportion to crimes against the person. Changes that affect the relationship between wages and prices to the disadvantage of the wage earner may result in an increase in illegal efforts to obtain the necessities of livelihood. About all of value that comes out of this sort of study is to show (1) that the largest proportion of all crimes are those against property and (2) that in times of economic disturbance the laboring classes always suffer and therefore crimes against property may increase. As pointed out above, the improved methods of caring for the victims of unemployment have removed part of the motivation to commit crimes against property.

3. Economic Status of Persons Committed. Another method that has been used in attacking the problem of the economic factors in criminality is that of examining the economic condition of those convicted of crime and comparing the proportions convicted from that class with their proportions in the general population. The European criminologists have been diligent in the use of this method, Di Verce applying it in Italy. The substance of his findings was that while about 60 per cent of the total population belong to the poorer classes in Italy, some 85 to 90 per cent of convicted persons come from those classes. It is quite easy to show from any sample of prisoners to be found in any institution that the most of them come from the poorer classes. Sutherland holds that "... less than two per cent of the persons committed to prison in a year belong to the upper class."¹⁷ The difficulty with this method has been to get a comparable economic classification of the total population with which to compare the sample of criminals.

Research has revealed that the incidence of mental disorder among the poorer populations of Chicago is higher than among the richer groups of that city. The authors of this study feel that the differences are significant, but they are reluctant to draw definite generalizations from the data.¹⁸ However, they do suggest that the differing rates in the case

¹⁶ Di Verce, *La criminalita e le vicende economiche d'Italia* (Turin, 1894), p. 138.

¹⁷ Sutherland, "White Collar Criminality," *American Sociological Review*, Vol. 5, Feb., 1940, p. 1.

¹⁸ Jaffe and Shanas, "Economic Differentials in the Probability of Insanity," *American Journal of Sociology*, Vol. XLIV, Jan., 1939, p. 539.

of senility and paralysis may be attributed to the fact that the richer are more able to care for these cases at home, or are able to afford the patient better medical attention and thus avoid extreme forms of disability. The functional disorders, they hold, may be accounted for by the greater economic insecurity to be found among the poorer classes.

In this indirect manner, the small percentage of crime committed by the mentally ill may be credited in part to economic factors. This sequence of factors, if actually operative, well illustrates the complexity of the task of isolating the causative factors that are associated with behavior.

The author's study at Wisconsin State Prison disclosed that the three occupational classes designated as professional, proprietor, and clerical constituted but 19.9 per cent of the sample, while the three categories of farmer or farm laborer, skilled, and unskilled laborer made up 80.1 per cent of the offenders. We do not do violence to the facts if we hold that the economic status of the two sets of occupations are divergent. Certainly the two occupations of "professional" and "unskilled laborer" are quite differentiated in this regard. They constitute 4.1 and 31.6 per cent, respectively, of the total sample. Here is evidence that there is a factor of differential economic disadvantage associated with criminality. This disadvantage, of itself alone, of course, does not account for the apparently greater percentage of offenses committed by the poorer groups. Not all of those who commit crimes are imprisoned or even apprehended. One would have to remember that this higher commitment rate might be partly accounted for by their inability to hire lawyers to defend them and, for the petty offenders, by inability to pay fines. There is a possibility that the lower economic classes contribute more than their proportionate share to the criminality, as it is commonly defined, of any given country. In order to make sure that this is true, however, it is necessary to have very much more careful studies than have been made up to the present time.

4. Occupational Distribution of Criminals. Still another way of attacking the problem of the economic factors in criminality is to study the occupational distribution of criminals. Again, these criminals are those who have been committed to institutions. Here, too, European writers have been prominent in this method of attacking the problem. Bonger studied the occupation of criminals in Italy from 1891 to 1895. The upshot of his study was that criminality was more prevalent in commercial occupations than in agriculture, manufacture, and the trades, was still lower among domestic workers, and very low among those in the liberal professions. However, Aschaffenburg's study of the occupation of criminals in Germany, 1890-94, showed that in that country the agricultural laborers had a high rate, but the agricultural employers a low one. Likewise, the industrial employees had a high rate, and the employers a much lower rate. Similarly, when he divided the commercial

OCCUPATIONS OF PRISONERS AND THEIR BROTHERS IN THE WISCONSIN STATE PRISON

	Property Offenders						Sex Offenders						Murderers						All Prisoners					
	Prisoner			Brother			Prisoner			Brother			Prisoner			Brother			Prisoner			Brother		
	Num-ber	Per-cent	Per-cent	Num-ber	Per-cent	Per-cent	Num-ber	Per-cent	Per-cent	Num-ber	Per-cent	Per-cent	Num-ber	Per-cent	Per-cent	Num-ber	Per-cent	Per-cent	Num-ber	Per-cent	Per-cent	Num-ber	Per-cent	Per-cent
Professional	3	3.3	4.8	4	7.5	6.2	3	0	0.0	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0	7	4.1	7	4.4	7	4.4
Owned business	8	8.8	7.1	3	5.7	4.2	2	1	3.7	1	3.7	4.2	1	3.7	11.2	3	11.2	7.0	12	7.0	11	6.9	11	6.9
Clerical	11	12.0	5.9	2	3.8	6.3	3	2	7.4	2	7.4	6.3	3	7.4	0.0	0	0.0	8.8	15	8.8	8	5.0	8	5.0
Farmer or farm laborer	16	17.6	20.3	4	7.5	29.2	14	7	25.9	7	25.9	29.2	11	25.9	40.7	11	40.7	15.8	27	15.8	42	26.4	42	26.4
Skilled labor	36	39.6	25.0	12	22.7	20.8	10	8	29.7	8	29.7	20.8	7	29.7	25.9	7	25.9	32.7	56	32.7	38	23.9	38	23.9
Unskilled	17	18.7	36.9	28	52.8	33.3	16	9	33.3	9	33.3	33.3	6	33.3	22.2	6	22.2	31.6	54	31.6	53	33.4	53	33.4
Total	91	100.0	100.0	53	100.0	100.0	48	27	100.0	27	100.0	100.0	27	100.0	100.0	27	100.0	100.0	171	100.0	159	100.0	159	100.0

SIGNIFICANT DIFFERENCES BETWEEN PRISONERS AND BROTHERS

	Property Offenders						Sex Offenders						Murderers						All Prisoners					
	Differ-ence			S. E.*			Differ-ence			S. E.			Differ-ence			S. E.			Differ-ence			S. E.		
	Differ-ence	S. E.*	C. R.†	Differ-ence	S. E.	C. R.	Differ-ence	S. E.	C. R.	Differ-ence	S. E.	C. R.	Differ-ence	S. E.	C. R.	Differ-ence	S. E.	C. R.	Differ-ence	S. E.	C. R.	Differ-ence	S. E.	C. R.
Farmer	—	—	—	—21.7	7.5	2.88	—21.7	7.5	2.88	—	—	—	—	—	—	—	—	—	—10.6	4.5	2.38	—	—	—
Skilled	14.6	6.9	2.15	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unskilled	18.2	6.7	2.72	19.5	9.7	2.01	19.5	9.7	2.01	19.5	9.7	2.01	19.5	9.7	2.01	19.5	9.7	2.01	19.5	9.7	2.01	19.5	9.7	2.01

* S.E.: Standard Error.

† C.R.: Critical Ratio.

group, the independent commercial workers seemed to furnish more criminality than the commercial employees.¹⁹

Goring, who studied 3,000 criminals in Parkhurst Prison in England, came to the conclusion that, while persons convicted of arson, wilful damage to property, and sexual offenses are selected disproportionately from agricultural laborers, seamen, and miners; while soldiers and sailors are more prone than persons in other occupations to commit crimes of personal violence and rape; and while the commercial and artisan classes commit less of these crimes but commit more of the acquisitive offenses, *it is not that the occupation itself is an influence upon crime, but that the occupation provides varying opportunities for committing different kinds of crimes.*²⁰ His conclusion was that the relative economic prosperity of the family in which the convict was brought up has no relation to the frequency of his convictions.²¹

This seems logical in light of what we know of occupational differentials in criminality. One is not surprised to learn that the embezzelers are business officials or clerical workers and that occupations of this nature increase the probability that this type of worker will commit offenses against property rather than against persons. Homosexuality is prevalent among the occupations that isolate the sexes. The present writer's study at the prison at Waupun substantiates Goring's position. Offenders who owned their own business or were clerical workers constituted 8.8 and 12.0 per cent, respectively, of the property offenders, but only 5.7 and 3.8 per cent of the sex offenders and 3.7 and 7.4 per cent of the murderers. The accompanying table indicates the distribution of other occupations among the three types of offenders.

It will be observed that statistics on the occupational classification of the brothers of the prisoners are included in the table as controls. Fewer of all prisoners, and fewer of the sex offenders, were farmers than their brothers. More of the property offenders were in skilled occupations, and fewer followed unskilled occupations than their brothers. Just the opposite is true of the sex offenders. Significantly more of the latter than their brothers were in unskilled occupations. It is in this category of sex offenses alone that the unskilled person predominated. We are not in possession of sufficient data to interpret these statistics. All that one can say is that there is some association between occupations and type of crime, and that it is probable that in these varying occupations there are opportunities presented for certain forms of offense, while the opportunity for others is lacking in significant degree. Further research on a broader scale, in which controls are carefully prepared, is prerequisite to more inclusive generalizations concerning the manner in which economic factors operate to make criminals.

¹⁹ Bonger, *op. cit.*, p. 446; Aschaffenburg, *Crime and Its Repression* (Boston, 1913), p. 66.

²⁰ Goring, *The English Convict: A Statistical Study* (London, 1913).

²¹ *Ibid.*, p. 282.

5. **Early Employment and Juvenile Delinquency.** In the absence of recent studies on the relationship between employment and juvenile delinquency we shall have to rely on earlier inquiries on this point. That juveniles do not play much part in the percentage of prisoners who have no occupation is indicated by the fact that of the 48,566 females and juveniles committed in 1910 over half reported an occupation prior to commitment. While lack of an occupation seems to be hazardous for adult males, employment for females and juveniles is associated with an undue number of delinquents.²²

Even clearer light is thrown on the problem by a study of over 500 inmates of the Wisconsin State Prison by the prison physician. While 84.1 per cent of 592 prisoners and 82.5 per cent of 120 recidivists worked before the age of fifteen, 50.5 per cent of the former and 61.7 per cent of the latter were without a trade.²³

A study reported in 1918 tells us that 38 per cent of the children appearing before the Children's Court in Manhattan in 1916 had worked prior to their appearing in court. This is in contrast to the 10 per cent of all Manhattan children who were employed.²⁴ There is no agreement between the various interpretations of employment as a factor in juvenile and female delinquency. It may be merely an associated factor, or it may actually be a significant item in the delinquency. As suggested elsewhere, occupation may offer opportunity for the commission of delinquent acts. Reckless and Smith quote a study made in 1911 that found about 15 per cent of the offenses committed by working boys were connected with the occupation, but the majority was connected with the kind of working associates they had, or with leisure-time activities outside of working time.²⁵ They hint that it may not be employment itself that is responsible for the delinquency, but rather the release from employment, and associates when not employed.²⁶

The Wisconsin study of the author revealed that the prisoner more often than his brothers contributed to the family income at an early age. Also, it was shown that the murderers and their brothers went to work before they were fourteen far more often than did the sex and property offenders and their brothers. The explanation is not obvious, but the larger proportion of farmers among the lifers may account for this in part.

It may well be that all of these interpretations are valid for a propor-

²² *Prisoners and Juvenile Delinquents in the United States, 1910*, Bureau of the Census (Washington, D. C., 1918), pp. 150-153.

²³ Sleyster, "The Physical Bases of Crime as Observed by a Prison Physician," in *Physical Bases of Crime* (Easton, Pa., 1914), p. 125. Papers and discussions contributed to the XXXVIIIth Annual Meeting of the American Academy of Medicine, Minneapolis, June 14, 1913.

²⁴ McIntyre, "Child Labor and Juvenile Delinquency," *Journal of Delinquency*, Vol. 3, pp. 95-114.

²⁵ Reckless and Smith, *Juvenile Delinquency* (New York, 1932), p. 154.

²⁶ *Ibid.*, p. 155.

tion of the delinquents. It is not likely that all of them respond to the varying forms and lengths of employment in uniform fashion. The total situation under which they experience these factors must be studied to determine the relative influence of the multiple factors. However, the factor of unemployment may be valuable as one of many indices of delinquency.

6. Professional Criminality. Certainly it may be argued that, if one cannot make sure by these methods that the economic factors play an important part in criminality, it is possible to say that the desire for economic gain is an important motive in *professional* criminality. The bank robber, the burglar, the forger, the counterfeiter, the confidence man, the business racketeer, the kidnapper, and all such criminals are as much moved by economic considerations as the ordinary business man in the pursuit of a legal occupation.

No statistical study of professional criminals has been made to determine their relative numbers in the total prison population, still less among the total number of criminals. If such studies had been made they would give us perhaps a skewed picture of the actual professional criminal population. It is conceivable that they may be of a higher type mentally than the rest of the prison population. The studies referred to in Chapter VII seem to indicate that those who commit crimes supposedly characteristic of professionals have a higher I.Q. than others. Tulchin found in his studies of prisoners in Illinois that in general "the highest median Alpha scores are made by the men committed for fraud."²⁷ In my study of 1,118 prisoners in the State Prison of Wisconsin it was found that those guilty of bank robbery, embezzlement, and forgery had the highest percentage with an I.Q. of over 70. Tulchin found that among his Illinois prisoners the recidivists made higher median Alpha scores than the first offenders.²⁸ But from these studies we cannot be certain that counterfeiters, forgers, embezzlers, and perpetrators of fraud are very much higher in their mental rating than sexual offenders, than most of the criminals by violence, and than the petty offenders. Indeed, from some of the case histories available it is clear that certain of these prisoners who have made their living by criminal activity of one kind or another are not unusually bright. Consequently, until we obtain better information we shall have to say that probably the more clever ones with the higher I.Q.'s are represented by very small numbers in the prison populations. Possibly even if we knew well the professional criminal in the institutions we might not have an adequate picture of his type in general.

The group of individuals who make their living by taking the property of others either by force or stealth are not a homogeneous group. In this country at least three categories are recognizable: (a) the individual, un-

²⁷ Tulchin, *Intelligence and Crime* (Chicago, 1939), p. 38.

²⁸ Tulchin, *op. cit.*, p. 46.

organized criminal who works largely by himself; (b) the organized mobsters who derive their main revenue through robbery or extortion; and (c) the numerous businesses that operate within the flexible framework of ethics, but often on the border line of illegal procedure. Let us briefly differentiate these three forms of criminality.

(a) *The individual criminal*: In the book *The Professional Thief*,²⁹ an autobiography of a reformed criminal, which has been carefully annotated by Edwin H. Sutherland, an insight into the life of the unorganized professional criminal is gained. The techniques, jargon, and experiences are given in detail, and there is little doubt that this form of delinquent considers himself sharply distinguished from the occasional offender. His is a career, a business, as much as that of the lawyer or the proprietor of a cigar store. While there is an *esprit de corps* among these criminals, they are not organized in the sense of the urban gangsters.

The material brought out by the author and by Sutherland makes it clear that there is little agreement, even among the thieves themselves, regarding the desirability of quitting the business and getting into legitimate practice. With some it is apparently more than just work; it is a pastime as well. The "thrill" associated with successful completion of a "job" has a counterpart in ordinary, successful business affairs, but is heightened by the risk involved, as is true in some cases of "high finance."

(b) *Organized criminals*: In the book just cited and in most of the books discussing crime and criminals one finds a treatment of the traditional criminal, the sort that is brought to mind when the word *criminal* is heard. His offenses are those that, together with the homicides, sex offenses, and so on, constitute crime in the popular sense. However, there is extant in the United States to-day a species of criminal activity of growing importance because it is a serious threat to the welfare of the country. In his activities the traditional criminal is largely on his own, working with few cohorts at best; in reality he is an opportunist who must await proper circumstances under which to work. Such notorious criminals as Dillinger, "Baby Face" Nelson, and the like, were, despite the publicity given them, really of this class of offender. They were largely on their own.

But organized criminality does not have to await expedient situations in which to operate; it creates the proper situations. In recent years America has seen the mushroom growth of the practices known as "rackets." The word, probably coined in the early 1920's, has had ample opportunity for application since that time. The newspapers made Americans conscious of the name Al Capone and the widespread domination he exercised over thousands in the Chicago area. He is the stereotype, but the form of crime he symbolized did not disappear when he was sent to prison for evasion of income-tax obligations. Barnes says that Capone

²⁹ (Chicago, 1937).

must be considered as a crude beginner in the light of the developments of the last fifteen years.³⁰

The "racket game" is in reality domination of legitimate and illegitimate business alike by extortion carried on mainly against the proprietors of business houses. The proprietor is approached by members of the highly organized group of criminals who "suggest" that he join the "protective" organization. If he hesitates, dire threats are made, and if he is adamant, the threats are carried out. In the end he usually accedes to the demands and contributes a stated amount to the criminal syndicate. Fear of further retaliation restrains him from seeking aid from the police, and distrust of the law-enforcing agencies may be a real factor in deterring him from this move.

The techniques that the members of the organization employ in their practices are varied but usually consist of the destruction of either the physical property of the prospective member of the "protective" organization or the property in his hands belonging to his customers, for example, customers of a dry-cleaning establishment, laundry, or the like. Should this prove ineffective, threats upon the lives of the proprietor's family are not infrequently made. In former years bombings were more commonly used.

Another phase of the racketeering is the practice of "muscling in" on a business. A case in point concerns a night club in Chicago. Not long after this particular club had begun to show profit a jaunty individual appeared, congratulated the owner on his success, and announced that the owner needed a partner. At the protestations of the owner to the information that the new "partner" was to become his cashier the next night and collect 50 per cent of the profit, the usual threats were made. During the following nights hoodlums hired for the purpose caused all manner of discomfort to the guests, insulting them and using abusive and profane language, and flooded the place by wrecking the plumbing in the wash rooms. Again, capitulation to the demands of the criminals was in order; the owner discovered that he *did* need a partner!³¹

This sort of extortion has spread to an unknown number of sources of profit for the members of the various organizations and probably has taken newer and as yet unrevealed forms. Only recently has the United States Government succeeded in breaking up similar practices in connection with the racing game. The income from this particular racket netted the head man somewhere between five and ten million dollars per year. Extortion from all forms of "rackets," it has been thought, must gross well above the billion mark. Some estimates have been as high as eighteen billion dollars. These are only guesses; no one knows. Such

books as Mooney's *Crime, Incorporated* and Cooper's *Here's to Crime* vividly portray the machinations of this form of criminality but provide no adequate evidence of its extent.

Some justification for Barnes' calling Capone a beginner is found in Mooney's book. Mooney writes, "There is no smart big-time racketeer member of *Crime, Incorporated*, who has ever been in jail. If a racketeer has been in jail, he is neither smart nor worthy of the title "big-time!"⁸²

Mooney provides us with this account of the meeting of the New York board of directors for *Crime, Incorporated*.⁸³

In New York City the board of directors of *Crime, Incorporated*, holds its executive sessions high up in a building on Times Square. In every town they hold similar executive sessions, always in a building in the center of the greatest activity. In San Francisco it is in a building in the Montgomery Street financial district; in Chicago it is on Dearborn Street, always where other big business fogathers.

It was in the late afternoon that the first of the directors of the crime combine entered the lobby of the structure through which several thousand persons pass hourly. The man might have been going to any one of the hundreds of offices in the building devoted to every sort of business activity.

The man neither sidled nor slunk into the building. He hopped from a taxicab as nonchalantly as you or I might to keep a business appointment.

A glimpse of those making up this menacing group of super-racketeers or a dictaphone recording of what went on in that room would have shaken the entire country.

Three of the men in that crime board executive session were important figures in local and national politics. Their names, if revealed, would shake every city in the country and topple scores of state and national politicians. Another man in that room is the head of a business enterprise that is considered one of the first half dozen in the East. Beside him sat a gray-haired man chewing a cigar who is a lifelong friend and closest confidant of a police official high in the esteem of the city. Across from him was the district leader whose single word could break any office holder in the city.

Three others, a gambler, and two modern gangster tacticians, completed the board of directors.

Following is a list of the fields in which the rackets are worked:⁸⁴

Pin-ball games	Stocks and bonds
Policy or numbers games	Gambling (dice, cards, lotteries, and so on.)
Race tracks	Produce and other foods
Commercialized vice	Garages and automobiles
Loan sharks	Abortions
Night clubs	Gun-running and counterfeiting
Union and industrial shake-downs	Narcotics
Real estate	
Hot ice (diamonds)	

⁸² Mooney, *Crime, Incorporated* (New York, 1935), p. 31.

⁸³ *Ibid.*, pp. 38-41.

⁸⁴ *Ibid.*, p. 37.

Probably this list is not exhaustive, but it does give some indication of the scope of the "business" of this sort of professional crime. In some instances the racketeering is carried on against other law breakers, but in the end most of the financial burden is passed on to the consumer, the unorganized public. This brief account should make it clear that Barnes is not exaggerating when he says that "Dillinger, at the height of his career, was not even Public Enemy No. 1,000."⁸⁵

Crass as the statement may appear at first blush, this form of criminality is no worse *from the point of view of the consumer* than the activities of the business men who mulct the American public to the extent of millions for products and services that the sellers know well are inferior, unnecessary, or worthless. The differentiating factor is that laws have been passed to place the activity of the ordinary racketeer definitely in the extralegal category; pressure from lobbyists have postponed the passage of legislation that would place the activities of the "legitimate racketeers" under the same ban. The next section treats of these latter activities.

There is another phase of organized gangdom that will be mentioned here. That is the type of "business" exemplified by the organization known as "Murder, Incorporated," recently uncovered in New York City. It is an expansion of the single "finger man" activity so essential to the successful operation of definitely extralegal activities.⁸⁶ A variation on this theme is seen in the Philadelphia murders committed to defraud various insurance companies of thousands of dollars. Here murder is performed as a service to interested parties and is a lucrative business while it lasts.

(c) "*The legitimate rackets*": This is the term applied by Sutherland to the following practices: misrepresentation in the financial statements of corporations, manipulation in the stock market, commercial bribery, bribery of public officials, misrepresentation in advertising and salesmanship, embezzlement and misapplication of funds, short weights and measures, misgrading of commodities, tax frauds, misapplication of funds in receiverships and bankruptcies.⁸⁷

With the exception of the item of embezzlement and misapplication of funds, this list qualifies for inclusion under the heading of "professional criminality." This particular form of crime still seems to be more at home under the classification of opportunistic practices. The detection of it is so common as to render it too hazardous as a profession. As Sutherland points out, "White-Collar Criminality" (for our purposes the designation of "legitimate rackets" is preferable) "flourishes at points where powerful business and professional men come in contact with persons who are weak." This is, of course, also true in the case of the illegal

⁸⁵ Barnes, *op. cit.*, p. 702.

⁸⁶ See "The Strange Case of Murder, Inc.," *Life*, Apr. 15, 1940, pp. 96-99.

⁸⁷ Sutherland, "White-Collar Criminality," pp. 2, 3.

rackets treated above. Sutherland continues by saying that "embezzlement is an interesting exception to white-collar criminality in this respect. Embezzlement is usually theft from an employer by an employee, and the employee is less capable of manipulating social and legal forces in his own interest than is the employer. As might be expected, the laws regarding embezzlement were formulated long before laws for the protection of investors and consumers."³⁸

Even so, it is interesting to point to the contrast between this weak sister of the white-collar crimes and the cost of the traditional offenses. The first six public enemies stole about \$130,000 in 1938. This pales into insignificance when it is set beside the fruits of the embezzlers. The sum secured by Krueger's embezzlements is estimated at nearly two thousand times as much. In 1931, four cases were reported that grossed nine million dollars.³⁹

Commodore Vanderbilt's query, "You don't suppose you can run a railroad in accordance with the statutes, do you?", typified the attitude of the "robber barons" of the last century.⁴⁰ Their history and influence has been thoroughly treated from many angles, and it is unnecessary to review it here. The names of Frick, Gould, Fisk, and Vanderbilt have been replaced by those of Insull, Van Sweringen, Musica-Coster, and so on, but the theme is much the same.

Something that comes closer home to most of us is the activity in the merchandising of commodities that are found in the homes throughout the land. We pay well for these and like to feel that we get our money's worth. That we pay much more than the actual value of the goods is often true. The part that advertising plays is an important one. Advertising in America has grown to tremendous proportions, and the end of selling the product advertised has controlled the means to that end. Little attention has been paid to the coincidence of advertising copy and the actual nature of the product or service in question. Exorbitant claims for the ware are generally accepted as legitimate devices to move the merchandise. One has but to review the history of pure food and drug legislation as it has been introduced into Congress to discover the pressure of the lobbyist to defeat this form of consumer protection. The position of the manufacturers and canners is clear regarding falsification and "trade puffing."

Were it possible to discover the amount of undeserved money that this falsification has enabled certain business houses to take from the American consumer, the figure would not be insignificant! More startling would be the number of deaths and prolonged illnesses attributable, directly and indirectly, to the taking of patent medicines the efficacy of which was attested to by claims of the manufacturer and by persuading

³⁸ *Ibid.*, p. 9.

³⁹ *Ibid.*, p. 5. Krueger was president of the International Match Co.

⁴⁰ *Ibid.*, p. 2.

"testimonials." Those who prosper through the vending of these assets of the grim reaper continue to bask in the light of social approval, and their sons and daughters enjoy position and advantages in excess of those of the naïve parents who contribute to the coffer of the modern patent medicine man. One needs do no more than to look through the monthly reports of the Federal Trade Commission to learn how widespread is false advertising. The reports of the Security Exchange Commission provide plenty of material on the sharp practices of large corporations. One wonders what anthropometric research would reveal regarding this type of criminal. Professor Hooton could find here a group readily identified, and the American Medical Association undoubtedly is in a position to provide him with proper names and addresses.

One needs not restrict his gaze to the merchandising phase of business to observe such sharp practices. Services are sold with equal disregard for justice or accuracy. Any discussion of the elastic ethics of the law profession as it is practiced in this country would be redundant. Even the highly ethical medical profession is not without divergent members.

One may agree with the historian who remarked that the burglar alarms in banks should be attached to the directors' offices, and still differentiate most of the banking failures from the deliberate frauds of the merchandising business, of fake securities, of stock manipulation, of "milking" of corporations, and of the legal, but tricky, operations of directors of corporations and their lawyers. The banker, it is granted, takes many long shots but generally hopes that the return will bring profit and the investors' money back safe and sound. This is in contrast to the conscious knowledge of the seller of cancer cures and tuberculosis remedies that his product is a phoney, and of captains of finance who do not hesitate to cheat the government. In instances where the banker has guessed correctly on the long shot, he has gained the reputation of an astute and fearless business man, and hailed as an honor to his profession. Too often the "big business man" is hailed as a financial genius when he is guilty of robbing his fellowmen by shady deals, of grinding the faces of the poor, and of corrupting legislators and judges. If one has any doubts on these scores let him read Gustavus Myers, *The History of Great American Fortunes*, Flynn's "Financial Racketeering" in MacDougall, *Crime for Profit*, Josephson's *Robber Barons*, *The Great American Capitalists, 1861-1901*, and Arnold, *The Folklore of Capitalism*.

One does not have to assent to the Marxists' stand to recognize the fact that the practices of the organized criminals are closely associated with the loose institutional ethics that are prevalent in the American business world. A confluence of many divergent factors has been necessary to create the philosophy of American business. This philosophy is reflected in the practices of the "legitimate racketeers," and it is a short step from this activity to the definitely extralegal practices. The main differences between the two forms of graft is that the group that has the

power to do so has not put the ban of positive punishment upon the perpetrators of such acts.

Let us point out briefly some of the factors that go to make up this elastic code of ethics. Not the least important is the principle of *caveat emptor* (let the buyer beware) which, despite legislative and ethical measures designed to vitiate it, still is employed widely. The tendency to accept money as the criterion of social status also augments the efforts of many to acquire money by fair means or foul. Also, an economic system wherein the organization is all on the side of the producer and distributor provides the stage for exploitation of the consumer. Even were the latter organized, it is quite possible that what has been referred to as the "eldorado complex" the "something for nothing" philosophy,⁴¹ would prepare him for a killing by schemers. The "suckers" who make the midway of the county fair a thriving business are found in droves a thousandfold greater awaiting the opportunity to gamble their hard gained cash against the long shot of a big return. One need not resort to deep-seated "gambling spirit," or the like, to explain this desire for money. Parsons suggests that the ". . . much talked of 'acquisitiveness' of a capitalistic economic system is not primarily, or even to any very large extent, a matter of the peculiar incidence of self-interested elements in the motivation of the typical individual, but a peculiar institutional structure which has grown up in the Western world."⁴²

This is applicable in the case of "impatient acquisitiveness" as well. It is for this reason that we say that the type of criminal dealt with in this chapter, who so closely follows the dictates of the business world, is a phase of cultural phenomenon of much broader scope than that of criminology. It would, according to our reasoning, be inept to center the efforts of a criminology text about this form of behavior. It is a subject that cuts across the disciplinary divisions as we have come to know them. Thus it becomes expedient to treat of the various angles of the problem in accordance with these divisions. It remains for the individuals who have worked in the associated fields of economics, political science, and sociology to bridge the gaps and to treat of the subject as a unit.

THE INFLUENCE OF ECONOMIC ORGANIZATION UPON CRIME

There are those who believe that the way in which the economic organization is set up has a good deal of influence upon criminality. The Marxian contention that the present "capitalistic organization" of society makes for an increase of crime is voiced by Bonger. To him and his school, such organization is the mother of all crime. By "the capitalistic organization of society" he means an economic organization on the basis

⁴¹ Barnes, *op. cit.*, p. 692.

⁴² Parsons, "The Motivation of Economic Activities," *Essays in Sociology*, ed. by Hart (Toronto, 1940), p. 65.

of private ownership and private profit. To Bonger the unwholesome social conditions, such as crowded housing, indecent living conditions, improper care of children, lack of education, denial of opportunity for the higher culture, emphasis upon selfishness instead of upon consideration of social welfare are all due to our present society. He charges also that, in addition to these indirect results of the economic system, the conduct of industry for private profit is responsible for the financial crises, the individual displacements, and the inequitable distribution of wealth that seem to have such a positive effect upon crime. He believes that if the productive instruments of wealth were owned by the state and the profits were removed from modern industry, crime would largely disappear. Then men would receive the just products of their labor, and they would work for the welfare of the whole group. The profit motive would not dominate industry, poverty with its crushing, degrading influence would not exist, and much crime would disappear. Moreover, he believes that the physical and mental incapacity that now accounts for a considerable proportion of crime would cease to exist because these things are produced by environmental conditions. The Bolshevik criminology in Russia is based upon this theory.

A number of other criminologists, while agreeing that economic conditions and the present economic organization are responsible for some of our crime, have seriously criticized the assumption that a change from private to public ownership of the instruments of production would cause any great decrease in crime. For example, Garofalo argues that crime in general is not due to proletarian conditions. He cites figures to prove that the number of criminals from the poor is not much greater in proportion to their number in the total population than the criminals from the better economic classes. This conclusion he arrived at on the assumption that many of the crimes committed by the poor class are petty agrarian thefts and that the higher number of criminals from among the poor is due to the fact that they cannot afford the money necessary to defeat the ends of justice that the rich, accused of crime can afford.⁴³ Tarde likewise combats the socialist indictment of the present organization by an endeavor to show that the criminality of the proletarian classes is not much greater than that of the higher economic classes and that where it is higher the difference is not due to the present economic organization of society but to the endeavor to acquire wealth.⁴⁴

The Marxians assume that the fundamental factor in the economic process that gives value to goods is labor. In this assumption they do violence to sound economic theory, based upon a valid analysis of the factors of production, the discussion of which we must leave to the economists. However, it has been shown that in the United States the problem of poverty is not one primarily of production but of distribu-

⁴³ Garofalo, *Criminology* (Boston, 1914), pp. 156, 157.

⁴⁴ Tarde, *Penal Philosophy* (Boston, 1912), pp. 389, 390.

tion. Publications of The Brookings Institution have shown that in "prosperous" 1929 we had about 200 per cent more plant capacity than our population with prevailing incomes could buy. But had the distributive process been such as to raise the family incomes below \$2,500 to that level, actual consumption would have been raised by more than \$16,000,000,000 and would have absorbed the entire *potential* productive capacity of our existing (1929) plant.⁴⁵ So far as poverty affects criminality, then, it is not to the economic system that we should look for either cause or cure, but to the way in which it works. If the system prevents a fair distribution of the products of the economic system, relative poverty will result, class feeling will develop, slums and disease will flourish, and social heterogeneity and strife will be accentuated. If, on the other hand, it fairly distributes the joint products of land, labor, capital, and business management, the welfare of the population will then rest on the relations between the number to be employed and supplied with the necessities of life, and the resources of men and materials and organization for the exploitation of those resources.

The Marxians also assume that it is impossible to correct the evils of our economic society, evils acknowledged by all shades of opinion. According to them it is inherent in the capitalistic system that wealth is unevenly distributed, that the rich inevitably become richer, and the poor, poorer, and that it is impossible under the present circumstances to provide better conditions of housing, conditions of living, education, and opportunity to share in the higher culture. They refuse to believe that under the present system the economic gains of the working classes in the last fifty years can be permanent.

Bonger contends that the egoistic tendencies which appear in full force in the criminal are not innate but are the result of the mode of production. He attempts to show that in primitive societies the members of the group who share with each other in time of need do so because they have not learned through the use of money to dispose of their surplus products for a commodity that enables them to save their labor from one day to the next. This altruism, says Bonger, rests upon a system of production that is non-capitalistic, so that the egoistic impulses are stifled, while the altruistic are developed by the fact that unless they help each other in time of need the whole group suffers and may perish. On the other hand, according to this author, the capitalistic system releases and develops all the egoistic impulses of man and strangles his altruistic characteristics.⁴⁶

One who is acquainted with the life of primitive peoples will not forget their poverty and the fact that they have criminals in spite of this

⁴⁵ Levin, Moulton, and Warburton, *America's Capacity to Consume* (Washington, 1934), pp. 127, 128; Nourse and associates, *America's Capacity to Produce* (Washington, D. C., 1934), pp. 421-430.

⁴⁶ Bonger, *op. cit.*, pp. 281-401.

system that to Bonger is ideal. The only difference between the poverty of the primitive tribes and the poverty of civilized man is that it is universal among the former. It may be that crimes of cupidity are rarer among them than among the civilized, although we have no facts on which to base such a judgment. Nevertheless, however ideal may be the economic organization of pre-literate people, they have their criminals. The customs of every such group and the earliest codes of law show us that they have their struggles with crime. The assumption of the Marxian socialist that a change in the fundamental economic organization would do away with the evils of our society while retaining all of its good points is entirely gratuitous and rests upon no facts in the history of mankind. The theory of the economic determinism of crime, the theory that the present form of economic organization is the chief factor in modern crime, is on a par with every other particularistic explanation of human behavior. No doubt our economic system based on finance-capitalism and private profit is responsible in part for our crime and probably accounts for the particular forms of crimes against property that are new to our culture, such as the racketeering, and the like, we have just discussed. That they can be controlled in time by regulations and by the growth of customs of honor in business relations is the hope of those who appreciate the values of our present system in the production of goods unparalleled in the history of the world. They believe that the evils of the present system are not incurable.

THE MECHANISMS BY WHICH ECONOMIC CONDITIONS INFLUENCE CRIMINALITY

What we should really like to know is how these economic factors play upon the personality and produce the criminal act. We shall have to go back to our general theory that conduct is the outcome of the reactions between the biological organism and the stimuli to which it responds. In the words of one writer, the nature of the stimuli "...is not a category of motivation on the deeper level at all, but is rather a point at which many different motives may be brought to bear on a certain type of situation."⁴⁷ Economic conditions are a part, and in our society a rather important part, of these stimuli. In our ideology economic welfare is looked upon as fundamental to social welfare. Economic conditions, therefore, play a part in developing the personality. These motivations may develop a personality that desires to obtain economic status without the discomfort of earning a living. On the other hand, poverty presses upon large numbers of our lowest economic classes and causes a lack not only of economic but also of social status. The desire for status is strongly operative in our civilization. Practically all of us wish to occupy a place of respect and esteem among our fellows. If a group is composed of those who hold certain beliefs with regard to economic honesty quite different

⁴⁷ Parsons, *op. cit.*, p. 55.

from the beliefs dominating those who make the laws, then you have the possibility of economic and social status within what may be termed an antisocial group. Consequently, even the social motives emphasize the economic factors in producing an antisocial reaction.

Furthermore, economic conditions create desires and reward those who satisfy them but punish those who fail to do so. Economic conditions also make demands upon those with inadequate native ability that lead to compensations contrary to the law. They also lead to certain marginal activities that lie on the line between approved and prohibited activities. That is the reason why the criminal who commits an economic crime can say his activities are no worse than those of respected citizens who also have committed questionable acts but are still within the pale of the law.

The desire for profit in the making and sale of alcohol leads to the commercialization of the liquor business and helps to set up standards of convivial conduct that in certain natures produce antisocial activities. Again, the economic conditions in our capitalistic societies make for unequal distribution of wealth and income, produce class strife, and provide a basis for violent efforts to remedy the unjust situation. Moreover, as things are organized in our society, economic conditions frustrate some of the important drives, such as Thomas's "desire for security," the "desire for new experience," the "desire for response," and the "desire for recognition." Some personalities, to compensate for these frustrations, engage in crime.

A study of 3,352 transient boys showed that 30.5 per cent of the families of these boys were active relief cases; another 5 per cent had no member of the family working; and 3.7 per cent had formerly been on relief. The percentage of low-income families in addition to these is indicated as being high.⁴⁸ Furthermore, economic conditions under a *laissez-faire* order tend to crowd people into slums, with disorganized homes, produce whole groups of antisocial neighbors, and permit the growth of demoralizing agencies. Without question in these indirect ways the economic order produces social conditions that play very important parts in the making of the criminal.

IMPORTANCE OF THE ECONOMIC FACTORS

The weight of the economic factor in producing criminals cannot be precisely determined from our present knowledge. Some of the data I have cited may be suggestive, but they are not conclusive. While these factors are not the only ones that play upon the subtle mechanism of a personality, and while we must not lose sight of the natural characteristics of the individual that to a large degree determine his social and economic status, on the other hand we must not forget that for the great majority of adult men the struggle for a livelihood makes them

⁴⁸ Outland, "The Home Situation as a Direct Cause of Boy Transience," *Journal of Juvenile Research*, Jan., 1938, p. 34.

keenly susceptible to the psychological results of their economic experience. Nor may we forget that even for those who have a barrier between themselves and want, their ambitions for social prestige may only whet their cupidity. Their struggle then is no longer for mere existence, but for social position and economic domination. Thus for one class economic need may provide the incentive that leads them into crime; for the other, social prestige and the social advantages more money will secure for them may tempt them beyond their power of resistance.

QUESTIONS AND EXERCISES

1. If need sometimes influences the poor man to steal, how do you explain the embezzlement of the rich man?
2. It has been claimed that economic need drives young saleswomen to prostitution. How would you explain the high delinquency rate of domestics who are sure of their board?
3. Why are employed children more apt to become delinquent, while unemployed male adults seem the most prone to criminality?
4. Prepare debate briefs on the question: Resolved that public ownership of the instruments of production would materially lessen crime.

Chapter XI

SOCIAL FACTORS: THE HOME, PLAYGROUND, AND SCHOOL

Social conditions, that is, all the economic, political, recreational, family, neighborhood, church, and school environments, are the external stimuli that excite the organism to the various forms of activity. With an individual organism having tendencies determined by heredity and modified by developmental experiences, the social circumstances condition the manifestation of these inherent and acquired characteristics.

While it has been the practice to emphasize what seem to be critical events in the life of the delinquent individual, these events shrink in significance when a more complete picture is gained through careful investigation. This improved perspective enables one to understand that these critical situations are important only as they are seen to be merely the final stimulus that touch off the personality prepared for delinquency by the common everyday experiences that so often pass unnoticed. One writer, who for over a period of fifteen years collected and read hundreds of life histories, has observed that most important are not the so-called critical experiences and crisis situations, but the little day-by-day adjustments that seem uneventful to the casual observer. He remarks that the three daily meals often turn the dining-room into an environment for producing problem children when there is overdirection that evokes emotional responses and habits favorable to maladjustment; music lessons, keeping clean, and other experiences taken for granted in the home, the neighborhood, on the playground, and in the school, are important in the development of both normal and abnormal personalities; the life organization formed in these little day-by-day experiences may be such that a single event becomes a crisis. Individuals seem to prepare themselves unconsciously for normality or abnormality, by their reactions to the usual, unpretentious adjustments of life.¹

The author once saw on a banner back of the speakers' stand at an assembly building at Asbury Park, N. J., a statement that expresses this truth in a striking way:

¹ Brown, *Unsupervised Play as a Factor in Psychopathic Personalities*, unpublished manuscript.

Sow a thought and reap an act;
 Sow an act and reap a habit;
 Sow a habit and reap a character (personality);
 Sow a character (personality) and reap a destiny.

It is with this emphasis that we shall treat of the various social stimuli that operate to produce delinquency.

INFLUENCES IN THE HOME²

Sociologists and social psychologists have studied from many angles the influence of the home upon the growing personalities of the family members. It is through this medium that the human organism, with its multiplicity of undefined impulses, first attaches meaning to the world in which it is to live and move. During the first and formative years of the child's life, the definitions of both physical objects and social situations are largely made for him by the older members of the family in terms of their past experiences. He acquires their likes and dislikes, their evaluations of social phenomena, their mannerisms, their religion, and their code of ethics, or reactions against them, in the time during which the influences of the home impinge upon him to the exclusion of other influences. His personality also reflects the tenor of the relationship and degree of accord between the members of the household. For the first few years of his life, the home is his whole world, and only gradually does he learn that this is only part of a larger sphere of activity.

In the adjustment to the extrafamilial world, the earlier experiences bulk large and aid or hinder in the development of the personality as these home-made habit patterns are congruent with or divergent from those which the individual finds it expedient to make in order to fit into the larger cultural group. His definitions of the situations in the larger world are of necessity made in terms of the habitual responses he has already developed in the home. There will come redefinitions, of course, but the ease with which these can be made to fit into the already formed personality pattern is largely contingent upon the nature of that pattern. There are at least two possible difficulties attending any marked altera-

² See Breckinridge and Abbott, *The Delinquent Child and the Home* (New York, 1912); Healy, *The Individual Delinquent* (Boston, 1915), Book II, Ch. 6; Burt, *The Young Delinquent* (New York, 1925); The Crime Commission of New York State, *A Study of Problem Boys and Their Brothers by the Sub-Commission on the Causes and Effects of Crime, 1929* (Albany, 1929); Glueck and Glueck, *500 Criminal Careers* (New York, 1930); Lund, *Ueber die Ursachen der Jugendasozialität*; Shideler, "Family Disintegration and the Delinquent Boy in the United States," *Journal of Criminal Law and Criminology*, Jan., 1918, p. 709; Healy and Bronner, *Delinquents and Criminals: Their Making and Unmaking* (New York, 1929); *Children under Institutional Care*, Bureau of the Census (Washington, D. C., 1927); *Juvenile Court Statistics*, Children's Bureau Publication No. 195 (Washington, D. C., 1927); Shaw and McKay, "Social Factors in Juvenile Delinquency," National Commission on Law Enforcement, No. 13, *Report on the Causes of Crime* (Washington, D. C., 1931), Vol. II, 271; Thomas and Znaniecki, *The Polish Peasant in Europe and America* (New York, 1927), Part III; *The Adolescent in the Family*, White House Conference (New York, 1934), pp. 212-235.

tion in the individual's previously formed patterns of thought and action: (1) the tendency of any habit pattern to persist once it is formed, and (2) the lack of willingness on the part of the individual and his family to make a change. Even without the latter difficulty the task is not easy, and with it familial conflict is added to the picture.

It is not to be forgotten that the home influence cannot be divorced from that of the community of which it is a part. In the main, the home is merely the vehicle whereby the social values and the habits that have been acquired in the larger community are transmitted to the younger generation. The degree of heterogeneity of these values and habit systems that is present in the world surrounding the home will determine the variation to be found within the home itself. The values held by the *dominant* group within a society ordinarily are taken as the criteria of proper behavior. One must realize that the most prevalent values and habit systems often seem to the individual grossly inadequate as means of fulfilling his predefined wishes.

The Inadequate Home. There are many factors that tend to make a home an inadequate one. We place in this category homes that for any reasons whatsoever fail to prepare the otherwise normal members for successful participation in the world outside of the home or fail to maintain certain standards of behavior and of economic provision that are deemed by the larger society to be desirable. Within the scope of this definition of an inadequate home fall the economically impoverished home; the home broken by death, divorce, illness, and the like; the degenerate home, not infrequently the home of the immigrant or other transplanted peoples; and those homes wherein a gross lack of understanding of the nature of the personalities involved contributes to delinquent behavior. As in many classifications, these headings do not necessarily represent mutually exclusive groups.

The Transplanted Home. In the more or less static, well-knit rural communities, the teachings of the home are nearly identical with those of the surrounding community, and the controls of the family are, in effect, those of the larger environment. However, in the dynamic secular society the larger habit systems are often transitory, and the heterogeneous cultural influences combine to thwart efforts to establish valid and lasting norms of behavior. It is under such conditions that teachings of the home that attempt to establish a rigid set of behavior norms prove to be inadequate in preparing the child for life in the larger community. Not infrequently must the individual redefine his outlook in many ways if he is to fit into the dominant group on the outside. In his attempt to adapt his ways of thinking and acting to the end that he may not be distinguished from members of this dominant culture pattern, he often violates the pattern of thought and conduct that is held to be inviolable by his family. Even though he wants to become a member in good stand-

ing of the extrafamilial society, the habits formed in the early, and relatively protected, years of life are so firmly ingrained that he may be unable to abandon them. While there is something of this sort of difficulty present in all succeeding generations within a dynamic society, it is brought into bold relief in the cases of families that have moved into unfamiliar cultural settings where social values and social controls are signally different from those of the old environment. The rural-urban migration and the migration from one nationality setting to another are examples of such changes. The latter shift in locale is not so simple as sometimes supposed. While there is always some difficulty felt in adjusting to a new national culture, this transition in itself is less significant than the fact that most of the immigrants to the United States have been of a rural group whose incomes were for the most part inadequate and whose formal education was quite lacking. There are no available data on the adjustment processes of families whose economic and social status are adjudged to be adequate and who have been transplanted from one cultural setting to another. It is our belief, based upon superficial observation, that in these instances where educational and other social advantages have been afforded the families, the cultural conflict is not sufficiently great to precipitate delinquent behavior either on the part of the parents or on the part of the American-born offspring of these parents. A complex of factors is subsumed under the heading, "cultural conflict."

The Immigrant Home. Almost every study of immigration and delinquency has shown the high rate of delinquency among the American-born children of immigrants.³ Healy and Bronner, while indicating that there is a difference in the incidence of delinquency among the children of immigrants as between nationalities, found that on the whole they are offenders more often than the children of native-born Americans.⁴ Shaw reports that the delinquency rate of the children of foreign-born fathers is 72 per cent greater than that of the children of native-born fathers.⁵ The Gluecks found the same thing among their five hundred criminals. There were two and one-half times as many persons who were native-born of foreign or mixed parentage in their reformatory group as are to be found, in proportion, in the general population.⁶

However, if the mixed parentage cases are omitted, a different picture is presented. A report covering twenty-six states reveals that the commitment rate per 100,000 of males fifteen years and over was 144 for the children of native parentage and only 120 for those whose parents

³ *Immigration and Crime*, Sixty-First Congress, Third Session, Senate Document 750, p. 1; see also National Commission on Law Observance and Enforcement, No. 10, *Report on Crime and the Foreign Born* (Washington, D. C., 1931), Section VII.

⁴ Healy and Bronner, *op. cit.*, Table 27.

⁵ Shaw and McKay, *op. cit.*, p. 81.

⁶ Glueck and Glueck, *op. cit.*, p. 119.

were both foreign-born.⁷ In nine of these states, the rates for the children of foreign-born parents are higher, and in seventeen they are lower. But there were more large cities in the nine states and also a larger proportion of foreign-born and of immigrants from southern and eastern Europe.⁸ Those facts may explain in part the low rates for the children of the foreign-born parents in the twenty-six states.

Some light is thrown on the differential crime rate of the different nationalities in a study of the commitment rate for felons in 1933. The corrected rates show how many of each nationality group would have been committed had their age distribution been that of the male population of the United States as a whole. Since the ratio of children of the "new" immigrant in the age group most likely to commit crime is disproportionately large, and the ratio of children of the "old" immigrants is small, the correction raises the rate of the second generation of the "old" 11 per cent and reduces that of the "new" about 29 per cent.⁹ In spite of this change, the rate of the "new" is about 2.2 times as high as that for the "old."

The factors that make the immigrant of southern and eastern Europe more prone to commit crime are probably many. Unfortunate conditions awaiting them on this side of the Atlantic, for instance, urban environment, inadequate income, and so on, undoubtedly are part of the picture. However, the possibility of there being a greater breach between their cultural background and the American than there is between the backgrounds of the northern and western European and the American is a real one. Moreover, the older immigrants and their children have had more time in which to adjust to the new conditions. Religious and economic factors are also part of the pattern that tends to distinguish them from the earlier immigrants.

It is interesting that the children of mixed parentage contributed significantly less (only ninety-one per 100,000 population) than did those of either the foreign- or native-born parents.¹⁰ The interpretation has been offered that this intermarriage is in itself an indication of the lessening culture conflict between the parents, and therefore the results of such conflict are less in the children.

As we pointed out above, other factors than merely the transplanting of families from one culture to another are operative in making for the delinquency of such families. It has been felt by some that the economic disadvantage of these groups is *the* significant item. Illustrative of this position is the statement of one writer who claims that statistics seem to indicate a higher rate for the native-born of European stock only because

⁷ Taft, "Nationality and Crime," *American Sociological Review*, Vol. I, Oct., 1936, p. 725. For original data see *Prisoners in State and Federal Prisons and Reformatories: 1933*, Bureau of the Census (Washington, D. C., 1935), Table 23, p. 26.

⁸ Taft, *op. cit.*, p. 728.

⁹ *Ibid.*, p. 736.

¹⁰ *Ibid.*, p. 735.

they disregard the various income levels. He argues that the second generation do not suffer from cultural conflict between the culture of their parents and that of their new environment but are the victims of a very definite culture on a socio-economic level that is determined by irregular, poorly paid employment resulting in broken homes, inadequate educational and recreational opportunity, and a generally stunted environment.¹¹

That economic advantage effects a marked improvement in the behavior of the second-generation group is not supported by the limited research that has been done to check this factor. Eleanor Glueck compared 121 boys of native parentage with 461 boys of foreign parentage on several points. She also compared 152 female delinquents of native parentage with 121 of foreign parentage. From these studies she concluded that the children of the foreign-born parents were afforded better home conditions than were the delinquents of the native-born. Both moral and economic advantages were on the side of the members of the household of the foreign-born parents.

She attributed the delinquency of these persons to the fact that, since they were more favorably circumstanced in so many ways, the hypothesis that the element of culture conflict in one way or another played a considerable rôle in the delinquency of these children of foreign parentage is unshaken.¹²

Park and Miller in their *Old World Traits Transplanted* have pointed to the intelligent manner in which the Japanese have sought to maintain control of their families and to sustain their "position" in the alien eye. Fortunate sex ratios, combined with a history of family and racial pride and readily identifiable physical characteristics, have made it possible to maintain the family and racial-group solidarity that acts to control the behavior of the members. In a study of the behavior of the Japanese in the Pacific Northwest, it was found that the home and extra-familial controls approached identity. Also, during the ten-year period from 1926 to 1935, the Chinese convicts in the British Columbia Penitentiary outnumbered the Japanese 173 to 7, this despite the fact that the population of the Japanese is more than four-fifths that of the Chinese in British Columbia.¹³ Another author suggests that part of the low percentage of delinquency among the Japanese is due to the fact that the Japanese solicitously counsel their children to commit no act that might tarnish the family name or disgrace their racial group in the eyes of the Americans.¹⁴

¹¹ Ross, "Crime and the Native Born Sons of European Immigrants," *Journal of Criminal Law and Criminology*, July-Aug., 1937, p. 208.

¹² "Culture Conflict and Delinquency," *Mental Hygiene*, Vol. 21, Jan., 1937, pp. 62, 65.

¹³ Hayner, "Social Factors in Oriental Crime," *American Journal of Sociology*, May, 1938, p. 911.

¹⁴ Smith, *Americans in Process* (Ann Arbor, Mich., 1937), quoted in Sellin, *Culture Conflict and Crime* (New York, 1938), p. 73.

Here we find evidence to support the belief that migration from one cultural environment to another is not, in itself, a reason for demoralization and consequent delinquency. The picture is still very unclear, and the need of research is great. An excellent discussion of the question is found in Sellin, *Culture Conflict and Crime*.¹⁵ Perhaps one is warranted in holding that the immigrant home and the urban home of the rural-bred are, as we have come to know them in the industrial and highly secularized regions of the United States, not adequately equipped, economically, socially, and educationally, to prepare children for participation in the dynamic and demanding life of the secular, urban world.¹⁶

Investigators of this problem in the future will have to exercise caution in the preparation of adequate controls. Not only are the children of immigrants now becoming the native-born parents of native-born children, but immigration has now largely ceased. These are only two of many complicating factors that will confront the researcher in this field.¹⁷

Social psychology provides us with certain theories that aid in the interpretation of the difficulty arising from the transplanting of persons from one culture to another. The social psychologists point out that thought and habit patterns, once formed, tend to resist efforts to alter them. In each culture certain beliefs and ideals are cherished and are inculcated in the minds of the members of the particular group. Especially in the more static societies are these patterns viewed as inviolable. When members of these societies move to another part of the world where different modes of behavior, divergent ideals and attitudes prevail, the way of life in the new home is seen, for the most part, as undesirable. Thomas and Znaniecki have pointed out the process by which the Polish immigrant home becomes a disorganizing factor for the children. The parents come to this country with a complete equipment of attitudes and traditions formed in the old country. They are less affected by the American social environment than the children. On the other hand, the child grows up and is subject to the constant pressure from other children, in the schools and on the playground, of a different set of attitudes, customs, and ways of looking at things. Consequently the culture complex that the parents have brought with them and attempt to impose upon their own children in America comes into conflict with that to which the children are subjected outside the home. Parental control is therefore lessened, and the children suffer in their conduct.¹⁸

A study by the writer of ninety-two "lifers" in the Wisconsin State

¹⁵ Sellin, *op. cit.*

¹⁶ See Wiese-Becker, *Systematic Sociology* (New York, 1932), pp. 222-225, for clarification of secular and sacred concepts.

¹⁷ The student is urged to read selections from the research material in this field, especially in Thomas and Znaniecki, *op. cit.*, Vol. II; Young, *The Pilgrims of Russia Town* (Chicago, 1932); Wirth, *The Ghetto* (Chicago, 1928).

¹⁸ Thomas and Znaniecki, *op. cit.*, Vol. II, Part III, Division 2, Chs. 5 and 6, pp. 1776-1821.

Prison showed that the lifer was one and one-half times as likely to have been born of foreign-born parents as a man of the same age in the general population of the state. Of 128 sex offenders the likelihood was almost twice that of the percentage in the population of the state.

The Poverty-Stricken Home. Although the rôle played by economic deficiency in criminal behavior has been discussed in the chapter on economic factors, we may point out here the manner in which these factors may operate through the home situation to contribute to delinquent conduct. Many times the poor home means the lack of common decency. Frequently it means absence of parents from the home, no proper discipline, resort to the streets for companionship and recreation, lack of proper food and medical treatment, frequent truancy, and early employment of the children. Frequently the young girls grow impatient of hard work and run away. Often the mothers of these children are obliged to work away from home and cannot provide proper supervision. Sometimes the families are so poor that the children are deprived of the means to purchase those simple necessities for childish enjoyment that their school friends frequently can afford. Moreover, these poverty-stricken homes are often in a slum where the children band together to secure the things which the poverty of their families denies them.

This last point is important. We know that there is a remarkable coincidence between the deteriorated areas of a city and high delinquency rates.¹⁹ We also have reason to hold that one tends to acquire the habits of the dominant group. The validity of these points enables one logically to indicate poverty, at least in the mobile, urban environment, as a significant factor in the complex of factors that turns the personality into delinquent channels. Again, the student must be warned against viewing poverty, in itself, as *the* cause of delinquency. Not all children coming from the homes of the poor, not even in the most undesirable districts, become guilty of serious delinquencies. It can, however, and often does, become an important ingredient in the formula that develops the criminal.

THE ANDREWS CASE

Stasia and Stanley Andrews, eighteen and seventeen years old, respectively, were born in the United States of Polish parents. This family came to the attention of the Judge Baker Foundation through Stasia. In the study of the case, however, it soon appeared that a family drama was back of Stasia's delinquency. Stasia's mother complained to the Polish worker in a near-by settlement that her daughter was nervous, excitable, and so strange in her behavior that she was sure there must be "something wrong with her head." Stasia finally left home and took a room in the neighborhood. Shortly after, Stanley was also seen for the reason that vocational guidance was desired in his case, although he was beginning to become delinquent.

The parents of these children show an intricate complication of poverty, bad

¹⁹ See Shaw and McKay, *op. cit.*; Taft, "Testing the Selective Influence of Areas of Delinquency," *American Journal of Sociology*, Vol. XXXVIII, Mar., 1933.

health, and incapacity for the responsibility of bringing up a family. The father appeared intelligent. When young, his relatives reported, he loved music and was fond of fine things. His family regarded him as nervous and easily excited and very anxious about his own health. As an upholsterer, he had had a very hard time making a living. Moreover, he had a congenital hip deformity, which, with his poverty, seemed to have somewhat embittered his spirit. His relatives claim that he had always had a bad temper, was stingy, and asserted in an obnoxious way his mastery as the head of the family. He even insisted on buying his wife's clothes.

The mother married her husband at twenty-four and had only a very limited education. She appeared to be overworked, worn out, and discouraged by the struggle through which she had gone.

Stasia presented no physical abnormalities. She was attractive and showed good taste in physical dress. "Her features are refined, her expression responsive and her manner quiet and friendly." She had fair average ability, so far as revealed by a mental test. There is no sign of abnormality in judgment, will, or emotions. The examination revealed no abnormal personality traits. Her mother, however, reported her irritable at home, sarcastic, showing ill-will to the other children, and jealous of her older sister. In school she formed friendships normally, had shown no extraordinary interest in boys, had a nice girl chum, was fond of reading, enjoyed motion-pictures, and recently had joined a girls' club. She graduated from grammar school when a little over fourteen, after which she at once found employment, took a commercial course in a night school, had always worked in factories and had held her job well, working in only three places during four years. From one of these she was dismissed only because of bad business conditions and later was asked to return.

In Stanley we have a boy decidedly small for his age, with pleasant features and lively expression, quick in movement and speaking with dramatic gestures. Aside from his underweight and poor strength, the physical examination showed no abnormalities. His intelligence quotient of 85 showed a very much lower average ability than that of his sister Stasia. The clinic adjudged him to be a border-line psychopathic personality but suggested that some of his instabilities probably were temporary, due to adolescence. Certainly he was above the border of mental defect. His personality traits showed him suggestible, easy-going, easily discouraged, but honest. He had no very special interest and read but little. Recently he had been going with bad companions, one of whom had a court record. Stanley had a bad school record, graduating from grammar school at sixteen. He had held three jobs, each for only a short time.

The home had been in congested tenement neighborhoods and consisted of four or five rooms. As long as Stasia was in the home it was clean and neat.

Stasia's story at the Foundation revealed that she had never been happy at home. She had had a grudge and dislike for her father, which appeared to have been the result of a number of incidents during her life. She remembered that at five her mother had promised to take her with her on a shopping expedition, because she had been very good, and her father forbade it, for no special reason. She cried and her father beat her before customers in the shop. Then her father was very disagreeable about her likes. She was fond of dancing around the house and waving her arms about, which made him furious because he had a sister who went on the stage. Moreover, while her father never drank, he was unclean about his person, and that disgusted her. She added that he swore a good deal in Polish, but he is not obscene. She liked music but while her parents gave Rosa and Vladimir music lessons, she had been denied that privilege. Moreover, while she was active and fond of exercise, she had to keep quiet at home and the noise of the others practicing and quarreling, she said nearly drove her

"wild." She did not think that any outside influences had had much effect upon her life. She was sure that bad companions had had no influence. She had never shown any interest in the opposite sex. Moreover, she had never had any worries or difficulties on that subject. She was also irritated by the fact that, while she loved pretty things, she did not have clothes to make her presentable at the parties to which she was invited. She said she worried a good deal about the home situation and at times was quite depressed. Since boarding away from home, she visited her mother but never her father.

With Stanley also the home seemed to present a situation that drove him out and subjected him to influences that were not healthful. Less bright naturally than his sister, he had to repeat two grades in school. Possibly also the home conditions contributed to that result. Without special ability, he worked first as an errand boy. He did not like it and then got other positions, each for a short time. Then he served at a soda-fountain in a drug-store for about eight months. He left there because the boys with whom he was going would come into the store and yell and call him names. The owner of the store was very nervous and irritable. The situation in the drug-store finally led him to give up the position. Then at home nagging went on because he was bringing in no money. His father and mother scolded him, and his oldest sister, Rosa, made trouble for him. As a result, he went away from home with another boy. This crowd of boys who formerly came into the drug-store and tried to steal things from the store and called him names was the crowd with which he was going when he was brought to the clinic. He claimed that he had not stolen with them and was going to quit their company.²⁰

Both of these cases show the influence of a poverty-stricken home. In the one case you have a girl of normal personality, having perhaps a rather irascible temper but without mental abnormality. In the case of her brother Stanley you have poor mental ability and perhaps a borderline psychopathic personality. In the case of both you have exceedingly bad home conditions. The home was shabby and unattractive. Poverty created difficulties; the father was bad-tempered and domineering, imposing on members of the household; much friction was to be found, and every day there was some partiality shown to those children who did not oppose the father's will. The result was the development of a feeling of antagonism to her father on the part of Stasia and the development of a feeling of discouragement on the part of Stanley. With a less clear-sighted and strong-minded girl, it is impossible to say what might have happened to her character. With Stanley the situation was somewhat different. Suggestible, easily led and driven from the home by the conditions there, he found companionship and leadership in a gang of delinquent boys.

The Overcrowded Home. Poverty in a family usually means that the housing is inadequate, and that overcrowding adds to the already unfortunate picture. In the complex of factors that eventuate in delinquent behavior, this one cannot be overlooked. In at least two ways the lack of room may contribute to delinquencies: (1) by driving the children into the street for their recreation, and (2) by encouraging sexual delinquen-

cies through the inability to provide children of different sexes with separate sleeping quarters. Not infrequently the children inadvertently observe their parents' intimate sexual behavior.

Burt's study in London showed that of his delinquent cases 21 per cent were living in overcrowded tenements, while of his non-delinquent cases belonging to the same social strata only 16 per cent lived in overcrowded tenements. He notes that the correlation between overcrowding and juvenile delinquency is a high one, the coefficient being 0.77; that is, with delinquents overcrowding is 1.32 per cent times as frequent as with non-delinquents from the same social level.²¹ In Breckinridge and Abbott's cases in Chicago, comprising 584 delinquent boys and 157 delinquent girls, 47 per cent of the boys were from families with six or more children and 21 per cent from families of eight or more children. Among the girls the corresponding percentages were 34 and 13.²² Of the 584 boys, 138 were the oldest in the family. The connection of this fact with delinquency may have been due to lack of discipline in the case of the oldest or the necessity of the oldest contributing to the support of the family and therefore being subjected to the conditions for delinquency in those cases where the children have to go to work. On the other hand, where the family is large and the house crowded, there is less chance for proper training of the younger children, especially if the mother has to go out to work. Case after case is found in these crowded homes where younger children have been so neglected that they slept away from home in all kinds of places.

The Broken Home. Numerous studies have been made that indicate a close association between high delinquency rates and broken homes. In some of these early studies no comparison was made with a control group.²³ Shideler estimated that only 25.3 per cent of the children in the total population are from broken families. On the other hand, he found that 50.7 per cent of 7,598 juvenile delinquents in industrial schools in this country were from broken homes. Healy and Bronner's study of 4,000 delinquents in Boston and Chicago showed that a little more than half of them were from homes in which both parents were living and with whom these children lived.²⁴ Cooley, who studied 3,053 criminals in New York, found that 47.1 per cent were from broken homes.²⁵ The Census Bureau at Washington found that of 10,039 juvenile delinquents admitted to institutions for the first six months of 1923, 56.1 per cent were from broken homes.²⁶ Of the Gluecks's 306 cases, 84

²¹ Burt, *op. cit.*, pp. 84-85.

²² Breckinridge and Abbott, *op. cit.*, p. 112. This study is defective in that there was no control group.

²³ Breckinridge and Abbott, *op. cit.*; Healy and Bronner, "Youthful Offenders," *American Journal of Sociology*, July, 1916, pp. 50-51.

²⁴ "Youthful Offenders," *loc. cit.*, pp. 121-122.

²⁵ Cooley, *Probation and Delinquency* (New York, 1927), p. 87.

²⁶ *Children under Institutional Care, 1923*, Bureau of the Census (Washington, D. C., 1927), p. 323.

per cent were from abnormal home conditions.²⁷ Burt, in England, compared the homes of delinquent with non-delinquent children and found that defective home relationships were much more numerous in the former cases. A study of 3,352 transient boys covering the period from August 1, 1934, to July 31, 1935, revealed that 55.6 per cent came from broken homes.²⁸ An Omaha investigation disclosed that of 808 delinquent boys, 54.1 per cent were from broken homes, and 64.1 per cent of 337 girls were members of families that had been broken.²⁹

In all these studies an attempt has been made to isolate the broken home as a factor in juvenile delinquency. Shaw and his assistants in the Institute of Juvenile Research in Chicago have shown that other factors must be taken into account in connection with the broken home. They point out that delinquency from broken homes varies decidedly with the area in which the home is found. Consequently there is no very consistent relationship between rates of broken homes and rates of delinquency. Furthermore, when the total group of children studied was broken up into various nationalities, the broken home appears to have greater significance with some nationalities than with others. For example, the broken home among Jewish children seems to be the least significant, while it has the highest significance among the colored. The range was from 16.3 per cent among the Jewish children to 46 per cent among the colored, and among the children of native white stock 31 per cent. Age also seems to have some effect upon the percentages.³⁰ Shaw's study on the basis of 1,675 juvenile court delinquent boys with a control group of the same age and nationality consistently indicated that the delinquents had a percentage of 42.5 per cent from broken homes, while the control group showed only 36.1 per cent.

Working with a sample of 330 cases of delinquency in Spokane, researchers found that 41.4 per cent of these came from homes that had been broken in one way or another.³¹ Since Shaw's detailed statistical analysis of crude data similar to that used in the Spokane study had cast doubt on the significance of the relationship of broken homes to delinquency, Weeks and Smith sought in their study to refine the procedure used by Shaw in order to check this previous finding. The conclusions reached were that, in Spokane, at least, the relationship of broken homes to delinquent behavior is significant, and that there is a similar association obtaining between the broken home and certain geo-

²⁷ Glueck and Glueck, *op. cit.*, p. 117.

²⁸ Outland, "The Home Situation as a Direct Cause of Boy Transiency," *Journal of Juvenile Research*, Vol. XXII (January, 1938).

²⁹ Sullenger, *Social Determinants in Juvenile Delinquency* (New York, 1936), pp. 23-24.

³⁰ Shaw and McKay, *op. cit.*, pp. 264-282. See also Shaw and McKay, "Are Broken Homes a Factor in Juvenile Delinquency?" *Social Forces*, May, 1932, pp. 514-533.

³¹ Weeks and Smith, "Juvenile Delinquency and Broken Homes in Spokane, Washington," *Social Forces*, Oct., 1939.

graphical areas.³² Consequently while the broken home is an important influence, it cannot be isolated from other factors in the study of delinquency.

It needs little imagination to understand how in a great city, with its numerous temptations and exposure to all kinds of influences outside the home, the orphan and homeless child, even though perfectly normal in physical and mental make-up, may become the victim of circumstances. The following case is an illustration:

A boy of seventeen murdered his grandmother while he was intoxicated because she refused to permit him to spend the night at her home. The boy's life up to this point had prepared the way for the action which sent him to prison. His parents never were congenial; constant discord was the order of the day in the home. Differences in religion and nationality backgrounds added their weight to the family disharmony. After several separations from her husband E's mother left permanently, taking the four children. Resentful at this act, the husband repeatedly induced E to leave the mother but finally abandoned him with E's grandmother, an overbearing, drinking, shrewish person. She harrassed E by telling lies about him that estranged him from his friends and their families, by opening his mail, by refusing to let his friends call at the house. This treatment was a signal factor in inducing him to seek companionship among less desirable persons in whose company he had been the night of the murder. Rejected by the people of the neighborhood, deprived of anything resembling a family life, the product of a home wherein harmony was not known, this immature youth was well prepared for his attack upon one of the persons whom he felt to be largely responsible for his plight.

The city presents peculiar temptations to *the orphan or abandoned girl*. In numbers the children who have lost both parents are not as great as those who have lost only one. Among the poor, however, this makes little difference, as the one parent is not able to play the part of both father and mother.

A case which will show how easily the girl without parents goes astray is that of Amanda, a fourteen-year-old German girl who lived with a Mrs. M. Mrs. M.'s oldest daughter was immoral, and her oldest son, who drank, seduced Amanda. The latter was not vicious but was wholly untrained.³³

Moreover, girls who have to share the burden of family support with the mother often become delinquent. Such a case was that of the oldest daughter of a Russian mother. Her father had died, leaving seven small children. The mother had to work to support them, and the home was of the poorest kind; the oldest girl also had to work and to give all her wages to the support of the family. By the time she was seventeen she had been in court and in the industrial school for girls twice. Case after case of this sort could be cited.³⁴

A recent study made in the state of Washington tends to throw some

³² *Ibid.*, p. 55.

³³ Breckinridge and Abbott, *op. cit.*, p. 94.

³⁴ Breckinridge and Abbott, *op. cit.*, p. 95.

doubt on the apparent discrepancy between the delinquency rates of the sexes from broken homes. It has been generally assumed that females in broken homes have a much higher rate of violation than do males. Further analysis of the data in this investigation revealed that males are referred to court for offenses that show a low broken home rate, that is, property offenses, traffic violations, and misdemeanors. On the other hand, females are found in court on charges of ungovernability, running away, and immorality, offenses that are associated with higher broken home rates.³⁵ Also, it was generally true that comparable sources of referral failed to reveal significant differences in rates. The sample is small (420 males and 95 females), but the findings are suggestive.

One can easily understand why *delinquency often results from the broken home*. If the mother has to work, she cannot give the proper care to the children. Frequently, therefore, they take up with undesirable associates. Moreover, the lives of the children are devoid of wholesome amusement; frequently their young lives are tied down to monotonous work and drudgery so that the allurements from outside the home lead them astray. Frequently also their school lives are interrupted. The situation is even worse when the father dies than when the mother dies or deserts. In 14.5 per cent of the Chicago cases the father was dead, while in only 9.6 per cent was the mother dead.³⁶ It is worse by reason of the fact that often the entire income of the family is cut off, and if the mother must then begin to earn she can no longer give attention to her children as she should. On the other hand, if it is the mother who is absent, frequently the father can secure a housekeeper, or one of the older girls may be able to take her place, or the father may remarry. In some cases, when the mother is dead, the father neglects the girl or occasionally abandons her.

Even when the surviving parent is able to secure a housekeeper or remarries, there is the problem of the adjustment of *the step-parent* to the children. In many cases when this adjustment cannot be made and the children are placed in charge of relatives, the adjustment between the children and the relatives is not adequate and delinquency results.

Another complication of home conditions that affects the conduct of children is *desertion*. In the cases of delinquent children in the Chicago court, from 8.4 per cent to 8.6 per cent were cases in which either the father or the mother or both parents had deserted the children.³⁷

When the home is broken by *insanity*, a more serious complication appears. Not only are the environmental conditions unfavorable for the conduct of the children, but frequently the mental weakness is inherited by them.

³⁵ Weeks, "Male and Female Broken Home Rates by Types of Delinquency," *American Sociological Review*, Vol. 5, Aug., 1940, p. 609.

³⁶ Breckinridge and Abbott, *op. cit.*, p. 91.

³⁷ *Ibid.*, p. 92; and Healy and Bronner, "Youthful Offenders," *loc. cit.*, pp. 50, 51.

Logically related to the broken home as a factor in delinquency is *illegitimacy*. The facts with regard to incidence of delinquency among illegitimates as compared with legitimates are somewhat conflicting. The European figures seem to indicate a high correlation between illegitimacy and delinquency.³⁸ Lundberg and Lenroot found that in Massachusetts 16 per cent of the children fourteen years of age and over, born in wedlock but under the care of the Division of State Minor Wards, presented unsatisfactory conduct, while of the children of illegitimate birth under the same care 28 per cent were problem children or delinquent.³⁹ On the other hand, Healy and Bronner found the illegitimate birth-rate in Massachusetts (4 per cent) nearly twice as high as in their delinquency cases in Boston. The higher mortality of illegitimate infants might account for the apparent variation, but Healy and Bronner do not think so.⁴⁰

The reasons for a high rate of delinquency among illegitimates may be:

1. The larger number who start life with a heritage of mental subnormality. At least twenty-two of the 102 children studied by the Children's Bureau were very backward or below normal mentality.

2. Most of them are born of parents with records of immorality or of delinquency.

3. In their disposition after birth they are subjected to many detrimental influences. Often they do not have suitable homes or are cared for by foster parents who will not deal as patiently with these children as they would with their own.

4. The United States Children's Bureau's study showed a large amount of alcoholism, sexual irregularity, and other forms of delinquent behavior in the heritage and environment of these children.

5. Even when mothers try to keep their illegitimate children, they must assume the double parental responsibility, frequently working away from the children to earn a poor livelihood for themselves and the children, and thus encounter almost insurmountable difficulties in giving these children advantages and training which children of normal parentage and homes have. Of these 102 children, fifty-five had good homes, as far as known, seventeen were in homes where there was immorality, thirteen were exposed to low moral standards, eleven were where there was lack of supervision, and six were in homes where the conditions were poor. Thus forty-seven out of the 102 had poor surroundings.⁴¹

From these studies it seems probable that in both the United States and a number of the states of Europe children born out of wedlock have a much higher expectancy of delinquency than other children. While

³⁸ Gruhle, *Die Ursachen der jugendlichen Verwahrlosung und Kriminalität* (Heidelberg, 1912); see also Bonger, *Criminality and Economic Conditions* (Boston, 1916), pp. 488-491, for European statistics.

³⁹ *Illegitimacy as a Child-Welfare Problem*, Part 2, Children's Bureau Publication No. 75 (Washington, D. C., 1921), pp. 55, 56.

⁴⁰ Healy and Bronner, *Delinquents and Criminals*, p. 122, note 1.

⁴¹ E. A. Lundberg and Lenroot, *Illegitimacy as a Child-Welfare Problem*, Children's Bureau Publication No. 75 (Washington, D. C., 1921), pp. 340-367.

social conditions are not entirely to blame for this situation, since many of these children are born of defective parents, nevertheless mental defect is a serious menace only in a bad social environment. Hence the social status of children with respect to the legalized family may be cited as an important factor in the making of the criminal.

The Degenerate Home. By the term *degenerate home* we mean one in which there is brutality, immorality, drunkenness, crime, and vice, often in connection with paralysis or insanity, imbecility, and other psychopathic conditions. In such a case the home conditions are unfavorable to the proper development of the children. There is the combination of the undesirable home and possible abnormal heredity that unite to produce moral disaster for the children. Accustomed from their earliest days to low ideals, to indecency, immorality, obscene language, and degradation of every sort, it is not to be wondered at that large numbers of children from such homes appear among the court delinquents.

Healy and Bronner found that 12 per cent of their 4,000 cases experienced excessive quarreling in the home. Unfortunately we have no figures as to quarreling in the families of the general population. In their Boston series they found that girls came about twice as frequently as boys from homes in which there was excessive quarreling.⁴²

In the Chicago court 107 out of 584 boys who appeared in the court in 1903-1904 had habitual drunkenness in their families. In the case of delinquent girls, of 157 in the Illinois State Training School from Chicago, thirty-one were the daughters of drunken fathers, at least ten had drunken mothers, twenty-seven had vicious fathers, sixteen had immoral, vicious, or criminal mothers, and twelve were from families in which other members than the parents were vicious or criminal. The most potent cause of delinquency in girls seems to be the home in which the mother herself is delinquent, or in which the father himself or some other member of the family has committed incest with the child. In the Chicago court records studied by Breckinridge and Abbott, they found a total of 348 cases "in which the court records show that the person under whose guidance the girl was growing up was obviously unfit to be entrusted with her care."⁴³

The studies by Healy and Bronner of Chicago Juvenile Court cases reveal other degrading conditions in the home. Alcoholism, immorality, or criminality was found in from 20 to 28 per cent of the homes from which these children had come. In the later series of 1,000 children they found that 7 per cent of the homes had in them a mentally abnormal parent—insane, feeble-minded, or epileptic.⁴⁴

The factors making for a degenerate home are multiple. Limited mental endowment, physical handicaps, impoverished social heritage includ-

⁴² Healy and Bronner, *Delinquents and Criminals*, p. 126.

⁴³ Breckinridge and Abbott, *op. cit.*, p. 107.

⁴⁴ Healy and Bronner, *Delinquents and Criminals*, p. 126.

ing educational deficiencies, economic disadvantage, loss or absence of parents, and so on, are often inextricably combined in the demoralized family situation. Many of the identifying characteristics of the degenerate home are merely symptoms of deep-seated difficulties that often escape the scrutiny of the persons themselves. Again we reiterate that the home situation is the natural result of forces operating between the family members and the environing community. To understand the home problem one must know also the many interactive factors in the total situation. Focusing of one's attention upon the isolated home can produce little more than an incomplete and distorted picture of the actual conditions.

The Disharmonious Home. A factor probably not entirely absent from any home, which flares up as a significant item in the misbehavior of some family members, is the lack of understanding between these members. Relationships, particularly those between parents and children, are pursued in the main along lines of random effort, by rule of thumb practices that constitute part of the parent's social heritage. Family accord is preserved in many instances *despite*, rather than *because of*, the conscious but unintelligent efforts of the parents to direct and control their children. The degree of dependency and affection that the child acquired for his parents during the formative years of his life will withstand remarkable abuse from the parents. By trial and error methods, parents often discover very effective and desirable means of control and education. Most of them, however, fail in some degree, and the child who survives the early home training without personality scars is rare indeed.⁴⁵

The student of personality is all too ready to admit the deficiencies of his knowledge. How much more handicapped must be the parent with his circumscribed experience and observation! Psychiatric records attest to the unfortunate results of the well-meaning parents' efforts to educate their offspring to participate successfully in the larger world. Most of us are unaware of the fact that we are as unequipped to deal with personality problems as we are with physical ills.

An experienced worker in the field of personality difficulties points out that even violent antagonisms between parent and child are often based on what "...we might call nothing at all!"⁴⁶ The situation must be observed through the eyes of the delinquent individual, for it is important in the meaning that it has for him. The parents' interpretation is of reduced significance if it does not coincide with that of the delinquent member of the family. It is desirable to equip the parent with the knowledge that will enable him to prevent the raising of these

⁴⁵ Van Waters, *Parents on Probation* (New York, 1927); Young, *Personality and Problems of Adjustment* (New York, 1940), Ch. XIV.

⁴⁶ Van Waters, "I Would Rather Die Than Go Home," *The Survey*, Feb. 1, 1927, p. 385; or her *Parents on Probation*, Ch. VII.

barriers of antagonism between family members. Once these are raised, it is difficult to erase them.

In our schools we train for everything else but parenthood. We teach "home-making," by which we mean teaching girls how to prepare food, decorate a house, make clothing, and keep the family healthy, but leave out the most important thing of all, man-management and child-management! And the males we train not at all. We stress the economic and æsthetic but quite neglect the psychological and the social.

Why be surprised if children become delinquent, when the home, that most ancient institution for the socialization of the child, fails to function? Is it strange that the school and the church so often fail with the child who has not had about him the influence of a good home?

The importance of the home in determining the future conduct of children is indicated in every careful study that has been made. Healy and Bronner took a thousand cases each from the Chicago study and from the Boston study. They found only 7.6 per cent of these 2,000 young repeated offenders who had been living under conditions reasonably promising for the proper development of a child. They remark, "We have no other figures showing such high correlation between background conditions and incidence of delinquency."

Burt summarizes his study of the environmental conditions of the London young delinquent by pointing out that the coefficient of association for poverty was 0.15, for defective family relationships 0.33, for vicious homes 0.39, and for defective discipline 0.55. Nothing could speak more eloquently of the influence of the home upon juvenile conduct.⁴⁷

Inadequate Parental Control. The fact that we are not born with ready-to-go patterns of conduct but must develop these through experience, establishes the rôle of the parent as directing agent as an extremely important one. The requirements of our dynamic culture are such as to render inappropriate those extreme forms of parental control formerly in use. Somewhere between laxness and complete domination lies the happy medium. The parents who, fearing "repressed personalities" in their children, sometimes adopt a "laissez faire" form of parental relationship often experience highly undesirable consequences. But the harsh opposite procedure often results in conditions equally undesirable. Two recently completed pieces of research in the field of marriage relationships revealed that the children who had been too severely disciplined in the parental home were less apt to succeed in marriage than were the persons who had been accorded "firm, but not harsh" discipline.⁴⁸

Research in the field of delinquent behavior has supported this finding in pointing to defective discipline in the home as one of the fertile

⁴⁷ Healy and Bronner, *Delinquents and Criminals*, p. 129; and their *New Light on Delinquency and its Treatment* (New Haven, Conn., 1936), Ch. III; Burt, *op. cit.*, p. 98.

⁴⁸ See Burgess and Cottrell, *Predicting Success or Failure in Marriage* (New York, 1939); and Terman, *Psychological Factors in Marital Happiness* (New York, 1938).

sources of personality difficulties that handicap the individual in his attempt to fit into the adult life of the community. Defective parental control of the children, whatever be the cause, makes for delinquency. The social function of parenthood is training of the child for such adjustment to the conditions of social life as will fit him to become a useful member of society. Van Waters says that the home where the interests of childhood are secondary to business, pleasure, or personal ambition is potentially a delinquent-producing home.⁴⁹ The homes where there is a lack of proper control furnish a surprisingly large number of juvenile delinquents.

Lack of parental control, as well as most of the other home conditions that contribute to juvenile delinquency, is often based upon disharmony growing out of subtle misunderstandings between the inmates. Healy and Bronner, on the basis of 4,000 cases of delinquent children in Chicago and Boston, found that 40 per cent of their cases came from families in which there was a great lack of discipline. Extreme parental neglect was found in 22 per cent of the 2,000 cases from Boston.⁵⁰ Burt, in his London study, found that in his "list of causes the group showing the closest connection with crime consists of those that may be summed up under the head of defective discipline." Such features he found five times as often with the delinquent as with non-delinquent children. In his analysis he found overstrictness reported in 10 per cent of his cases, while in one case out of every four in his study the discipline was too weak and easy-going.⁵¹

It is not poverty or a large family or even the broken home, important as these conditions may be, but the breaking of the golden threads of understanding, love based on confidence, respect, and esteem that accounts for most of the disasters of childhood and youth. How poorly do we visualize the primary functions of the home!

LACK OF WHOLESOME RECREATION

The influence on conduct of one's associates during leisure time has not been studied as extensively as it deserves. Allen T. Burns a number of years ago made a study of the influence of the parks and playgrounds in Chicago on juvenile delinquency. He could not discover that the large parks had any appreciable effect upon juvenile delinquency. He found, however, that the neighborhood parks and playgrounds had the effect of diminishing delinquency in the children who were within easy walking distance.⁵² In 1917 the Cleveland Foundation made a recreation survey of that city. Two parts of that study throw light upon this problem. While Thurston's study of delinquents showed that over 50 per

⁴⁹ Van Waters, *Youth in Conflict* (New York, 1925), p. 67.

⁵⁰ Healy and Bronner, *Delinquents and Criminals*, p. 125.

⁵¹ Burt, *op. cit.*, pp. 92-95.

⁵² Burns, *Charities*, Vol. XXI, pp. 25, 31. See also Gillin, *Poverty and Dependency*, (New York, 1937), pp. 594-596.

cent of the spare time of the delinquents was spent in desultory, unguided pursuits, my study of 160 wholesome citizens showed that only 0.7 per cent of their spare time was used in such ways. Moreover, it was clear from Thurston's study that the associations that the delinquents formed during their leisure time had much to do with their delinquency, while the study of the wholesome citizens showed an abundance of wholesome associations in their recreations.⁵³ While one must be careful not to explain such a phenomenon as juvenile delinquency on the basis of any one factor, such as the lack of proper recreation, all the indications point to the conclusion that this lack is a factor in producing delinquency. The reason for it is clear. Young people will play. If wholesome recreation is not provided, giving the opportunity to use spare time in invigorating activity with wholesome associates, the crowded streets and the vicious amusement places will provide the opportunity with evil companions.

The following cases make concrete the play of influences in the child's use of leisure time in producing delinquency.

John Smith, aged sixteen years, nine months, born of American parents, one of English and the other of Irish descent, provides an illustration of delinquency due largely to bad companions but complicated by poor parental supervision and understanding, by too much indulgence by the family, and by a lack of constructive influences in the home and neighborhood. Entering in as a minor factor, however, were certain personality traits such as mischievousness and restlessness, untruthfulness, lack of affection, and lack of response to punishment. He had been in court many times, when from ten to twelve years of age, for stealing, tampering with a railroad signal, serious arson, truancy, and staying out overnight.

Physically he was a short lad, but with good strength. His physical appearance was that of an upright, alert chap, but with coarse features and a rather peculiar and furtive facial expression at times. He was in good physical condition when examined except that he had three bad teeth and complained of having had headaches recently.

Mentally he had only fair general ability, being decidedly poor in language and exceedingly poor in his school work. On mental tests he showed good learning ability but poor concentration. He had very good motor control. There were no signs of any lack of mental balance.

The ancestry shows no positive evidence of bad strains. John's developmental history shows that he was rather small at birth, had a great deal of nutritional difficulty until one and one-half years old, suffered from children's diseases mildly, and had a slight head injury at eleven years of age, which cannot be shown to have had significant results. At twelve he was operated on for hernia.

The home conditions were fairly comfortable but very unattractive. Family companionship existed only in a minimum quantity. The mother and father were both away all day, and the grandmother had charge of the boys. She had no control over them, and when the father and mother got home at night they were too tired to exercise any discipline in the case of the boys. There was little

⁵³ Gillin, *Wholesome Citizen and Spare Time* (Cleveland, 1918), pp. 38-42; Thurston, *Delinquency and Spare Time* (Cleveland, 1918), pp. 143-145; see also Young, *Personality and Problems of Adjustment*, Ch. XV.

family recreation. John had never gone to Sunday school, and the father and mother had failed to establish any relations of confidence with the children. The neighborhood was unattractive, with the houses badly run down.

The parents seemed to know almost nothing about John's companions until he was ten years old, except that they were boys on the street. At the age of ten John became acquainted with an older boy named Mack. This boy, John's mother thinks, was the means of the latter's undoing. He had a bad reputation in the neighborhood. Moreover, after John had been sent to the industrial school because of delinquency, he again fell in with a group of boys who had a bad influence upon him. He was always active in outdoor sports, was considered a good football player, and was fond of exciting moving-picture shows, many of which he attended. His reading was almost entirely Alger books and a boys' magazine. He had never shown any interest in girls until recently.

He learned bad sex habits rather early and since then has been suffering somewhat from such practices. He has smoked since he was ten years of age and drinks tea three times a day. Later it was found that he was engaged in homosexual practices.⁵⁴

The following description from Thurston's study of delinquents in Cleveland affords us illustrations of the results of unguided and destitute use of leisure time.

The offenses of the delinquents now to be discussed were immorality, gambling, and staying out nights. Several of these children were associated in their offenses.

Nos. 89, 90, and 91 were three girls involved in experiences with boys. No. 89 was a girl of 13, of English-American parentage; she was in the seventh grade and said that she liked school, but not her teacher. No. 90 was 15 years old, an only child of American parents; she was in the second year of high school, quiet, likable, not very good in book work, but good in manual exercises. It was reported that her father and mother were not congenial, each having different interests. The mother had done sewing for five years and often left the girl alone after school hours; the latter stated that her mother attended dances and theaters in the evening with a woman friend, and that her father went to lodges. Both girls lived in good homes; No. 90's family had a slightly larger income than No. 89's. Both did from two to five hours of chores at home daily but used to spend four and a half hours or more on each school day, and seven hours on Saturdays and Sundays each, on street corners and at movies, often meeting boys. No. 89 had never attended social centers, settlements, or playgrounds, but was familiar with Gordon Park, Euclid Beach, and Luna Park. She admitted having been immoral with one boy in his own home and with another boy in a vacant lot. No. 90 had once for two months belonged to a Camp Fire group of which her mother was guardian, but the girls were not interested. She admitted having had immoral relations with five different boys, usually at her own home.

No. 91 was a thirteen-year-old girl of Irish parentage, whose mother had died when she was seven years old. She had a stepmother and four brothers, all older; three of them were not at home. The family of five lived in their own house of eight rooms, with a yard and flower garden, in a good neighborhood, and had a weekly income of \$33. The girl was in the seventh grade, a quiet, good student whose home duties and study took more time than those of the girls just described; yet she spent from four to eight hours daily, as did the other two girls, in the street and in activities through which boys could be met. In the summer she went to one of the amusement parks (to be designated, for the purposes of

⁵⁴ *Judge Baker Case Studies, Series I, Case 6.*

these stories, Y. Park) two or three times a week and picked up boys with whom to dance and skate. She is now in an institution, and says that she is sorry that her parents did not send her there sooner. The stepmother said that she could not understand how the girl could have done the things she did without their knowing it. She herself had taken the girl into her confidence and discussed sex questions with her.

Thurston adds:

As one thinks over these facts and reads again these brief accounts of serious juvenile delinquency, the conviction deepens that here, in a neighborhood that most people would think exceptionally good, is one of the worst failures in developing wholesome uses of spare time that has been revealed in this study; the conviction too gains ground that juvenile delinquency is no respecter of "good families" and "desirable neighborhoods."⁵⁵

Why does unsupervised, desultory recreation seem to result in delinquency? In order to answer that question we must understand the psychology and sociology of play. Here it is possible to refer to these explanations in only the briefest way.

Whether we take Spencer's physiological theory of play as a means of working off surplus energy, thus providing a kind of catharsis; or Patrick's theory of play as a pleasurable method of resting the organism by activities that are easily performed because of their being old race-habits and thus established in the very nervous organism of man; or the theory of Addington Bruce that through play activities we experience an emotional spree; or a mixture of all three, we get a glimpse into why man is an incurably playful being. But we must also think of the sociology of play if we are to understand why some uses of leisure time result in delinquency and others eventuate in socially wholesome attitudes and activities. Start with the observed fact that the human being finds the greatest satisfaction in playing with others. He does so because by association his emotions are more powerfully stimulated than by isolation. Natural selection over untold ages of human history has made him a social animal. But how the emotions will discharge themselves in activities depends on the kind of human beings with whom he associates. If his companions in leisure time activities are such as find the satisfaction of their urges in activities at once highly pleasurable and consonant with the mores of the group that defines the standards of conduct, then he finds in them patterns of behavior suited to his needs. But if his associates are those who have developed leisure time activities at variance with established and approved conduct, then he will find his emotional satisfaction in behavior moulded by such companions. This is not a new discovery. St. Paul wrote, "Evil companionships corrupt good morals" (I Corinthians 15:33).⁵⁶

⁵⁵ Thurston, *Delinquency and Spare Time* (Cleveland, 1918), pp. 78-85.

⁵⁶ For a fuller exposition of the psychology and sociology of play see Gillin, *Poverty and Dependency* (New York, 1937), pp. 594-596.

FORMAL EDUCATION AND CRIME

In view of the fact that so many criminals are abnormal in one or more respects, the figures on the relation of illiteracy to criminality must not be taken too seriously. Illiteracy, or even a meager education, may not be the cause of criminality, but rather the result of mental conditions which affect both education and conduct.

Relation of Education to the Crime Rate. Of persons committed during the first six months of 1923 to prisons and reformatories in the United States 10.7 per cent were illiterate, while only 7.1 per cent of the general population were illiterate. Among the literates the ratio of commitments was more than twice as great for those with only an elementary education as for those with some college training (31.4 per 100,000 of adult population as compared with 14.3). For the illiterates the commitment ratio was three times that for the college group. The showing is even worse if the comparison is by age groups. With the 10.7 per cent illiterate among the prisoners, of whom 73.6 per cent were in the age group fifteen to thirty-four, should be compared 4.6 per cent of the general population of the same age group who were illiterate.⁵⁷

The situation seems to be different in England. The relationship of education to crime in England has been studied most carefully by Goring. His investigation was limited to convicts who had been sentenced more than once. From this study it appears that there is "no significant relation between a convict's formal education, when a child, and the frequency of his subsequent convictions for crime, or that, if any relation there be, it is those who have received no school education who are the least frequently convicted." His conclusion is that "the kind of school education that many have received has no traceable influence upon the subsequent career of convicts; but that, since industrial and reformatory schoolboys must be the pick of those with the greatest law-breaking proclivities, this accounts for the fact that convicts with the worst penal records consist of those who have passed through industrial and reformatory schools."⁵⁸ Goring is of the opinion that even what he calls "effective education," that is, education that has continued long enough to give the school system a real chance at the boy, has very little if any effect upon his future conduct.⁵⁹

Aschaffenburg, on the basis of his studies in Germany, contends that the limited education received in the elementary school has no appreciable effect on criminality. He adds that if education has any influence on crime at all, it is upon the type of crime committed.⁶⁰

Says Garofalo, "One need not be a pessimist to recognize, therefore,

⁵⁷ *The Prisoner's Antecedents*, Bureau of the Census (Washington, 1929), p. 19.

⁵⁸ Goring, *The English Convict: A Statistical Study* (London, 1913), p. 275; Abridged Edition, pp. 198-201.

⁵⁹ *Ibid.*, Unabridged Edition, p. 276.

⁶⁰ Aschaffenburg, *Crime and Its Repression* (Boston, 1913), pp. 136, 137.

that the school is without direct influence in the diminution of criminality so far, at least, as the total number of crimes is concerned." He continues, "We see, then, the inevitableness of this supposedly powerful weapon. The saying that 'for every school which opened a prison would close' was never anything more than poor rhetoric. It is needless to dwell on this point. Even if we were without the figures to prove our conclusion, ought not simple good sense tell us that there is no connection between grammar and morality; between an acquaintance with the alphabet and the possession of the noble and ignoble passions?"⁶¹

It is true that in the crude statistics the uneducated show a greater crime ratio than the educated, but it may well be that lack of education and criminality are the results of a common factor, native incapacity. Or it may be that it is easier for the educated man to obtain employment and thereby make a livelihood than the uneducated man. Consequently, it seems as if education that prepares for making a living has an effect indirectly through improving the chances of economic success and therefore relieving the stress that propels some men into crime. Nevertheless, no statistical proof of the influence of education on crime can be produced. Too many other influences enter in, and at best the influence of formal education is indirect rather than direct.

Education and Type of Crime. In the United States, education seems to have some bearing upon the nature of the crime committed. Of commitments for the first six months of 1923 to prisons and reformatories in the United States, illiterates constituted 24 per cent of those committed for assault, of those convicted of homicide 19.7 per cent, of those violating liquor laws 17.3 per cent, of those convicted of rape 14.3 per cent, of drug law violators 11.5 per cent, and of burglars 10.8 per cent; but of embezzlers less than 1 per cent, of forgers 2.9 per cent, of those guilty of fraud 2.6 per cent, of those convicted of having stolen property 5.9 per cent, of robbers 6 per cent, and of thieves 8.1 per cent were illiterate. Compare with these figures that of illiteracy in the general population, 7.1 per cent, and that of the same age groups, 4.6 per cent.⁶²

A study of ninety-two "lifers" in the Wisconsin State Prison by the writer shows a somewhat higher educational status than for homicides in the United States. Of the lifers of Wisconsin only 9.5 per cent were illiterate as compared with 20.1 per cent of those guilty of homicide in the United States, while 4.8 per cent of the Wisconsin lifers were in the college group as compared with 2.1 per cent of those committed for homicide to the prisons and reformatories of the United States in the first half of 1923.

Two more recent studies have shown wide variations in education be-

⁶¹ Garofalo, *Criminology* (Boston, 1914), pp. 138, 139. (Reprinted by permission of Little, Brown and Co.)

⁶² *The Prisoner's Antecedents*, Bureau of the Census (Washington, D. C., 1929), p. 20.

tween different types of offenders. A study of 467 inmates of the Wisconsin State Prison revealed that 43.4 per cent of the lifers, 36.5 per cent of the sex offenders, and 16.3 per cent of the property offenders left school before the age of thirteen. A significantly larger proportion of the lifers left school under fourteen than their non-prison brothers. The relative percentages of 1,118 prisoners with an I.Q. below 70—lifers, 40; sex offenders, 49.1; property offenders, 15—may have some connection. At any rate, the lifers were the most uneducated of the three types of offenders.⁶³ An Iowa study patterned after the Wisconsin project revealed similar percentages.⁶⁴

Hooton in his study of 10,953 inmates of prisons and reformatories in ten states found a similar situation with respect to differences between those committed for various offenses. He reports that both first and second degree murderers definitely show excessive illiteracy and poor educational attainments, that rapists come next in educational experience, and that the forgers, the robbers, and those convicted of fraud have educational preëminence.⁶⁵

Importance of School Attendance as a Crime Preventive. If then it appears that the uneducated, no matter what the reason, are more likely to commit crime than the educated, we ought to give attention to school attendance. Children are dropping out of school in great numbers every year.

The Maladjusted School. Even if the child could remain in school, in many cases the education he receives would not prevent antisocial conduct. It may be that crime will result because of his inborn capacity or defects, or it may be because of the character of the teaching he has had. It is probable, as Goring has shown, that the somewhat close correlation between lack of education and criminality is the result of the lack of intelligence in the convict. On the other hand, it may be due to the fact that the school system does not provide in some cases the quality of education that develops in the child those standards and social values that prevent criminality. Says Gabriel Tarde: "It is useless to repeat what has been said on all sides as to the inefficiency, an established fact to-day, of primary instruction, considered by itself and leaving aside religious and moral teaching. This result ought not to surprise us. To learn to read, to write, to count, to explain a few elementary ideas of geography and physics, does not in any way counteract the silent ideas implied in delictual tendencies, does not in any way combat the object which they seek, does not suffice as a means of proving to a child that there are better means than crime of attaining this object. Only, all this may supply crime with new resources, may modify its methods of proceed-

⁶³ Gillin, *Backgrounds of Inmates of The Wisconsin State Prison* (Unpublished ms.).

⁶⁴ Erbe, "A Study of the Social Backgrounds of Life Inmates at Fort Madison Penitentiary," *Journal of Criminal Law and Criminology*, Vol. XXXI, July-Aug., 1940.

⁶⁵ Hooton, *The American Criminal* (Cambridge, Mass., 1939), pp. 85, 86.

ing, which become less violent and more crafty, and may sometimes strengthen its nature." ⁶⁶

So far as the school is to blame for crime, the trouble lies in the lack of adjustment of the school to the capacities and needs of the pupils. The school must not be blamed for its failure with the subnormal, except in so far as it attempts to force that child to learn things that he cannot grasp and to keep a pace of which he is incapable. With a compulsory school law must go an adjustment of the curriculum to the poor capacities of some of the children. Otherwise the school system produces delinquency. The child of poor capacity, discouraged by his failure to keep up with his class, by the nagging often visited upon him by the teacher, by the sneers of his fellows, by loss of the social prestige that is life to the growing child, and by loss of interest in some of the subjects he is forced to study, becomes a truant, rebels against authority, learns to find his interests satisfied elsewhere, and forms a habit of antisocial conduct.

An excellent illustration of the disparity between educational provisions and pupil ability is provided in the life history of a notorious nineteen-year-old gunman of the early 1930's, Francis "Two-Gun" Crowley. He was an early truant from school, yet no intelligent investigation of the reasons therefor was made. His low mental capacity (I.Q. 76) was not recognized until he was of high school age. Illiterate though he was, school authorities placed him in a printing class! ⁶⁷ His success later as an apprentice in lathing proved that he could be made a useful member of society, yet formal education still plagued him, and he truanted from night school because he was "not good at books." ⁶⁸

These early experiences, wherein he was forced to compete with those of more adequate mental ability, prepared the ground for the development of feelings of inferiority. It was in attempting to compensate for this that he became notorious as a killer. The treatment he received at the hands of the police apparently added to his discomfort. Early recognition of his mental deficiency and the provision of adequate training and understanding handling might have been major steps in the development of a personality quite devoid of the traits that led him to the executioner's chamber.

In New York City a study was made of truants several years after they were first charged with truancy. The follow-up study was made when the persons in question were in their early twenties, many of them married. Thirty per cent of the cases were adult delinquents, a percentage much above that of delinquents in the general population. Here again a symptom of underlying difficulties was largely unheeded, and the results were

⁶⁶ Tarde, *Penal Philosophy* (Boston, 1912), pp. 378-379.

⁶⁷ Wile, "Francis Crowley vs. The People of the State of New York," *Survey*, Feb. 2, 1932, p. 476.

⁶⁸ *Ibid.*, p. 477.

expensive for society. The school probably is not the significant factor in many of these cases, but the fact that many of these delinquents were retarded in their school work is indicative of difficulty in this direction. It has been estimated that mental inferiority is twenty times as frequent among the truants as among the normal group.⁶⁹

It appears then, that although the school training may be satisfactory for the majority of the pupils in attendance, it may contribute materially to the maladjustment of others in not being geared to their mental capacity. It should be recognized that in certain instances superior intelligence may be as conducive to delinquency on this score as is mental deficiency. The visiting teacher and other similarly trained persons are invaluable in programs designed to check the difficulties lying behind such symptoms as truancy.

After discussing the hereditary causes of crime, Goring adds, "We know that, to make a law-abiding citizen, two things are needed—capacity and training. Within dwells the potentiality for growth; but without stands the natural right to each child born into the world—the right to possess every opportunity of growing to his full height."⁷⁰

That our educational methods are not adequately training the child in social morals has long been suspected. Some recent studies into the actual conditions reveal a rather serious situation in the moral training of children. They also throw some light on the methods of moral education. These studies show that under temptation more than half of those tested will cheat, lie, and steal. Some of these tests were statements that the children were to designate as true or false; others were honesty tests on returning excess change given by a shopkeeper when the child made purchases. On the latter test 64 per cent of the children did not return the dime. Tests were given also of honesty in school examinations. The plan was to write a series of questions and answers on a blackboard and to hang a map over the answers, the same questions having been given to the class to be answered in writing. After a certain length of time the teacher left the room, and the map, apparently by accident, fell to the floor and revealed the answers on the blackboard. In some of the tests 100 per cent of the children yielded to the temptation to correct their papers as shown by the double sheets of paper, the lower one coated with wax to reveal any change or correction made.

Another set of tests intended to reveal whether children would overpraise themselves or allow themselves unearned credit was given them. The highest score made was 82.3 per cent, made by a troop of Boy Scouts organized two years previously. The failure of this group to make a perfect score was due to some boys who had recently joined, as the boys who had been members for the whole time came through 100 per cent honest. The second highest score, 80.4 per cent, was made by a troop organized

⁶⁹ "From Truancy to Crime," *Survey*, Jan. 15, 1929, p. 485.

⁷⁰ Goring, *op. cit.*, p. 373.

six months previously. The third highest was made by a group from a highly efficient private school, made up of boys from high-class homes. Ninth on the list came a group of boys from a typical American public school. The table of different groups is as follows:

Rank	Group	Average in test
First	Boy Scouts (two years)	82.3
Second	Boy Scouts (six months)	80.4
Third	Private school	78.2
Fourth	Private school	75.0
Fifth	Camp Fire Girls (four months)	62.2
Sixth	Boy Scouts (just organized)	60.5
Seventh	Private school	59.5
Eighth	Boy Scouts (just organized)	58.1
Ninth	Public school	56.8

While these tests alone are not conclusive, they raise a serious question as to whether our public and much of our private and family education is paying enough attention to the moral development of children. It is of interest to note that the Boy Scout organization, which emphasizes "honor" and honesty, shows up best in these tests.⁷¹

Can there be any doubt after such findings that what we have long suspected is true: that the beginnings of crime are to be found in children whose moral education has been neglected? Certainly our schools should begin to emphasize the education of children in social ideals of honesty, as much as in intellectual processes and attainments. How it should be done is a problem for the specialists in moral education.

Of greater and more fundamental importance is the lack of understanding of children's personalities shown by many teachers. Miriam Van Waters in her *Youth in Conflict* has called needed attention to this factor in juvenile delinquency. While the child comes to the school with a certain "set" of temperament and character produced in the home before the school gets him, and the school therefore must not be blamed for the difficult material with which it sometimes has to deal, yet its task is to correct the deficiencies of the home. The greatest failure of the teachers is the lack of what is known popularly as "an understanding heart." This is, of course, constituted of a genuine desire to aid the child and, what is equally indispensable, a serviceable knowledge of human nature. All too frequently are teachers possessed of a belief in absolute right and wrong, in free will, and the intolerance that attends these beliefs. The training of such teachers has been in fields of academic study

⁷¹ Voelker, *The Function of Ideals and Attitudes in Social Education* (Teachers College, Columbia University, New York, 1921), p. 99. A more recent study in Oregon's Corvallis Junior High School showed the discouraging fact that in that school the character-building organizations such as the Scouts and Y.M.C.A. had little influence in curbing the tendency to cheat. Summary in *Time*, Nov. 29, 1943, p. 50.

that they are to retail to the child, while the study of personality has been neglected to the extent that not only the child's personality is in danger of becoming warped, but also the teacher herself is led by popular misconceptions to the brink of mental abnormality.

How much of truancy, malicious mischief in school, lack of interest, misbehavior, "loud" dress, and immorality is due to the stupidity of teachers no one knows. But Van Waters and the whole group of modern psychologists and social workers have discovered plenty of cases to indicate that the amount is enormous. Truancy may easily be a justifiable protest against a system or a teacher who cannot imagine the difficulties and emotional stresses of childhood and youth. There are indications that many truants also need medical attention. Think back to your own childhood and recall how you suffered because of some trifling lack of understanding by your elders, whether parent or teacher.

That some schools and teachers are sensible of the need of "the understanding heart" is indicated by the following description by Van Waters.⁷²

If the school sometimes mishandles its delinquency cases, there are compensating, glorious exceptions. It all depends on attitude of mind toward delinquency, and training, skill and good-will of the teacher.

May was a tall, thin girl, a sickly orphan who had been brought up in the home of a conscientious woman, mother of a girl about May's age. May suffered jealousy. One day the clothing of the daughter of the home was found slashed and snipped into pieces. May denied doing it. She was locked in a room and fed bread and milk (which she refused) until the woman finally, to avoid scandal, took May to court. May was resolute in denial. The court explained that at present it was not necessary to discover the mystery of slashed clothes; the important thing was the shocking mental and physical state into which the child had worked herself. After examination and physical restoration, May was placed in a home where she attended a small high school; the principal was asked to coöperate in reconstruction of May. Years of effort by this socially-minded woman are now being rewarded. May took a purse from school within a few weeks of admission. No attempt by the principal was made to "prove" this, or to compel a painful "confession." May was told the probabilities pointed to her; if she wished she could make restitution. It was explained to her that stealing is a grave symptom of inner trouble, all her friends were now trying to help her and pending the "cure" it would be best for her to work out of school hours to repay incidental losses. She need not "confess" in words, no force would be used to make her pay if she felt innocent. Three time in two years May yielded to impulse to steal small articles, each time she made restitution. For over a year there has been no stealing; delinquency with boys broke out recently. The court offered to remove the troublesome girl from high school.

"No," said the principal. "This girl is making steady progress in school. Her attitude is not rebellious, it is that of one appealing for help. This is our job. Unless we fail, or the girl begins to injure others, we are going to keep May in school."

May is about to graduate, after four years' intelligent supervision in this high school."

QUESTIONS AND EXERCISES

1. Point out the conditions in the Andrews home that had a bad effect upon Stasia. Why did she not become delinquent? What other factors entered into Stanley's case?
2. Why is the lack of a father more serious for children than the lack of a mother?
3. What additional factors help to explain the high delinquency rate of illegitimates?
4. Read Chapter II in Miriam Van Water's *Youth in Conflict* and explain the lack of parental control in many cases of incorrigibility.
5. What in your judgment are the most important defects in our educational system as a character-builder? Which do you consider most important? Why?
6. Explain why illiterates should, more frequently than literates, be found in penal institutions.
7. Outline a program of education preventive of crime.

Chapter XII

SOCIAL FACTORS: THE COMMUNITY, CUSTOMS, BELIEFS, CLASS HATRED, RELIGION, THE COURTS, PRISONS, CIVILIZATION

COMMUNITY INFLUENCES

The influence of the conditions in the community upon the production of criminality is not easily measurable. Goring tried to determine the influence of environmental conditions upon his English recidivists. He studied, however, only the influence of nationality, employment, education, alcoholism, family life, and social class. His results indicated to him that "an adverse environment is related much more intimately to the intelligence of convicts than it is to the nature of the crimes they commit. Moreover, since mental defectiveness is closely related to crime, an easily imagined corollary to this truth is that the mental defectiveness of the convict is antecedent to his environmental misfortunes rather than that his unfortunate circumstances have been responsible for the mental defectiveness of the convict, and [his] lapse into crime." More careful study of the relation of mental defect to crime has not confirmed Goring's conclusions. Even in his findings the percentage of prisoners with subnormal intelligence was small. How account for those who were not mentally defective? More recent studies in England and in the United States have shown the important part played in the genesis of delinquency by the social conditions in which children and youth develop.¹

In order to see the operation of community influences in a concrete way upon criminality, consider the following cases.

Claghorn made a study of juvenile delinquency in rural New York for the Federal Children's Bureau. She reported her findings in twenty-

¹ Goring, *The English Convict: A Statistical Study* (London, 1913), p. 287; see also Shaw and McKay, "Social Factors in Juvenile Delinquency, A Study of the Community, the Family, and the Gang in Relation to Delinquent Behavior," in National Commission on Law Observance and Enforcement, No. 13, *Report on the Causes of Crime* (Washington, D. C., 1931), Vol. II, Chs. II-V; Weeks and Smith, "Delinquency Areas in Spokane, Washington," *Research Studies of the State College of Washington*, Vol. VI, Sept., 1938; Tannenbaum, *Crime and the Community* (Boston, 1938); Thrasher, *The Gang* (Chicago, 1927); Shaw, *Delinquency Areas* (Chicago, 1929); *The Jack-Roller* (Chicago, 1930); *The Natural History of a Delinquent Career* (Chicago, 1931); *Brothers in Crime* (Chicago, 1938); Hartwell, *Fifty-Five "Bad" Boys* (New York, 1931).

one of these rural communities and described not only the individual cases of delinquents found but also the circumstances around these children as they developed into delinquents. Most of the studies of delinquency have been made in cities, but this story reveals that criminogenic influences are active in many rural and village communities as well. Nothing will show better the tangle of factors that enter into the making of the criminal than her description of one of these rural communities. She describes one community as follows: ²

The township of *A*, nestled among the hills, is completely rural in character. Only one level road leads out of *A* village, which lies in the center of the town. High winds blow on the hills, and the roads are drifted full of snow for several months in the winter, practically isolating the dwellers on the hill farms. The town board appropriates some money for keeping the roads clear, but even so, in the winter one must leave the road and drive through the rough fields to get anywhere out in the country.

These hills are sparsely settled; less than 1,000 persons altogether are found in an area of about 45 square miles. Farming is now the all-important industry, though a little lumbering is also done.

Unscientific farming is still too much the custom around *A*. The more intelligent farmers are applying the principles of combined dairy farming and crop raising; but the majority still live in ignorance of modern methods. The district is therefore poor. Hay, potatoes, and grain are raised, and in the autumn everyone is busy picking up potatoes. Some of the children stay out of school to earn a few quarters at this work. Two creameries are located in the village.

A, the only village, straggles on an open flat, from which the hills roll up on all sides. About 200 persons live in the 50 houses, which, with one or two stores and churches, a blacksmith shop, a hall, and the schoolhouse, form the social, religious, and trading units of the town.

At any time of the day you can find a few of the idle old and the incompetent young gathered at the store. The counters on both sides are lined with loungers, most of them young men in the prime of life. The older men play checkers sometimes, but mostly they just sit, and smoke, and chew and spit—and gossip.

There are two churches in the village, and practically everyone not only belongs to one church or the other but actually attends the service and Sunday school. This does not prevent certain crowds of older and younger men from going to a neighboring town and getting drunk, but the church members here hold themselves pretty straight, as a rule, and the churches undoubtedly are felt as a living influence.

In winter the farmers drive in bobsleighs that accommodate the whole family. The back seats of the church are filled with the same young men who on week-day nights hang around the store and who are considered rather bad characters. Both churches engage in social and philanthropic activities. One, at Christmas time, sends presents to the poor. The two churches sometimes join forces for social occasions, and a most jovial, friendly spirit prevails. . . . In one of the churches the minister is very active, and to him and to the Sunday school superintendent of the district the church owes an increasing membership and prosperity. The Sunday school superintendent, who is in charge of all the six

² Claghorn, *Juvenile Delinquency in Rural New York*, Children's Bureau Publication No. 32 (Washington, D. C., 1918), pp. 76-80.

Sunday schools in this district, has graded both the schools in *A*, established training classes for the teachers, and made other improvements.

Both the churches hold many lively entertainments, the most interesting events of the countryside. These are held in the hall or at private houses, and everyone comes for a good time. But the poverty in initiative and in the range of amusements illustrates the fact that people do not by instinct know how to play.

A social held in the hall during the investigation was typical. Supper tables stood along one side of the long hall. Benches lined the other side and one end. Supper was served at the other end from a raised platform. The older women prepared supper and washed the dishes. About 50 young people were present. Boys from 12 to 30 were here—schoolboys and the same young men who line the store counters every night, who do "nothing much," and who have no education beyond the district school. Sam and Daisy Walters, who "don't know nothing" were the only ones not dressed in "store clothes" and the only ones who were rather left out of the hilarity. The girls were fine-looking and well-behaved, the same girls who attended high school in a neighboring town, or who are preparing to be teachers, or are just staying at home. One young married couple joined in the fun.

A few older persons, present early in the evening, were a somewhat subduing influence, but after they left the social became a rowdy affair. The great amusement of the evening was a lively kissing game. Dancing was suggested but at a church social it was strictly tabooed as a menace to the morals of the young people.

When the social broke up at 12:30 most of the boys and girls had to drive from 1 to 3 miles or walk a mile or so. . . .

There are 11 schools in the sparsely populated township, and they are failing signally to meet the needs of the youngsters. The eagerness with which the children leave school as soon as there is a possibility of escape proves that both parents and children feel this. Even in the village school, where older boys have always been accustomed to attend, only two boys over 14—the age at which they can get work certificates—were found. The girls go out of town for more advanced schooling. In the other schools, with an enrollment of about 100, only 10—5 boys and 5 girls—were over 14. Nearly one-fifth of the children enrolled are retarded. Many of the children live a mile or so away from the schoolhouse, which makes it impossible for them to attend when the weather is bad. Seven teachers are young girls with little or no experience and little judgment, and they are always having trouble with the older boys. . . .

The village school has been difficult for any teacher to handle. One, a young man, tried to win the scholars by kindness. He went swimming with the boys, taught them to dive, and played ball with them; but they treated him so badly that he had to give up the school. Another young man of fine character finished out the term. He told the Sunday-school superintendent that he was never in a school where such low moral standards prevailed. Even the girls would write vile things in the closets. His successor was a good teacher, but he had such a sour face that the scholars hated him. The boys led by the reprehensible "Doc"—the prize bad boy of the village—used to badger him to such an extent that it is amazing the townspeople would allow it. Another teacher became so discouraged by the criticisms of the village people that he took little interest in trying to teach anything, and most of the older boys left.

The whole atmosphere of the school is one of laxity, indifference, and license. The pupils are rude to one another and to the teacher. The schoolhouse is gaunt, bare, hideous. There is a fairly good library, and the teacher takes a boy's paper to school for the children to read. Formerly a club to interest the children in agriculture was maintained, but it died out.

With such a background is it any wonder that delinquents are made out of the children living there? One of many cases from this community described by Claghorn is as follows:

Edward Lane, nicknamed "Doc Parker," after a physician who attended at his birth, is an incorrigible child, who gives a great deal of trouble but has a cherubic cast of countenance. He is a sturdy, rugged little boy of 13, markedly undersized for his age.

"Doc's" father was an expert driller in the oil fields, but the field became exhausted and he returned to *A*, the home of his wife's people. Here he is a day laborer. When working on the State road, near the railroad tracks, Mr. Lane and the "Gang" used to get uproariously drunk. "Doc," who often accompanied his father, was given his share of the liquor. When the child would become partially drunk, his father and the other men would regard it as a huge joke. The boy smokes a pipe.

The first half of the year "Doc" went to the village school of *A*. His attendance was fairly good, and he was bright, but unwilling to study. The justice of the peace foresaw trouble with "Doc," because the boy was badgering the school-teacher, and sent for a juvenile docket. Nothing, however, was done. The people of the town believed that "Doc" is good-hearted, not mean. The present teacher, however, says that he is a sneak, and is of the opinion that only his small size saves him from the punishment he deserves.

Her cases suggest several conditions that contribute to the making of the criminal. In addition to the tangle of possible deficiencies in biological heritage with unfortunate environment, we have here illustrated the terrible poverty of wholesome neighborhood influences on the one hand and, on the other, the presence of degenerate personalities, degraded homes, demoralized schools, and low community ideals and customs.

Raise such conditions to a much higher intensity in their impact upon the developing child by crowding people thickly into a city slum; throw together in that area recent immigrants with a culture quite different from that of America; mix together different nationalities having culture patterns quite unlike; provide no, or at best insufficient, constructive institutions adapted to conserve the solidarity of the family and to produce homogeneous community values and attitudes; add to these elements the presence of a large number of influential but antisocial personalities, and you have a combination of circumstances in the community that prevent the moralization of growing children in accordance with the standards of the great community of which that area is only a part. Thomas and Znaniecki have delineated such a situation in connection with the Polish immigrant in America, and Clifford Shaw has presented in detail the picture of disorganized communities in Chicago and other large cities.³

³ Thomas and Znaniecki, *The Polish Peasant in Europe and America* (New York, 1927), Part III, especially pp. 1647-1654, 1776-1827; Shaw, *Delinquency Areas*, Ch. XVI; and especially Shaw and McKay, "Social Factors in Juvenile Delinquency," in *National Commission on Law Observance and Enforcement*, No. 13, *op. cit.*, Vol. II. Chs. 2-5.

Next to the home, and sometimes more important than the home, the community is formative in the life of the child. If he is the child of immigrants, the neighborhood, the streets are where his Americanization occurs. Here in the free and spontaneous activities with children and youth of his own age he forms his ideals and attitudes. Here his social values take shape. Every careful study of the delinquent shows the potency of the neighborhood atmosphere. Here are the "big shots" in crime, the heroes of the neighborhood, fascinating the children and young men and women. Here the gangs of boys provide material to the older gangsters from which new recruits may be obtained.⁴

Thomas has pointed out⁵ that often the cause of delinquency is the lack of the stabilizing influence of a neighborhood or a community. The function of the family, neighborhood, or community in a static society is to define a situation by means of standards that repress certain wishes and encourage others by providing certain stays or methods of social control. They determine conduct according to the standards obtaining in that family, neighborhood, or community, and they prevent misconduct. Here, however, we see the operation of these community standards in quite a different way. The difficulty in these communities, and in hundreds of others of which these are types, is that the standards are so different from those that the greater society recognizes as desirable that observance of the family, neighborhood, and community standards results in delinquency.

Moreover, as Miriam Van Waters has vividly shown, youth to-day is possessed with a feverish tendency to question the standards and conventions of society. Youth, to the irritation of older people, is constantly asking the reasons for accepted standards and traditions. Youth demands, instead of the easy path of conformity, the vivid reality of fresh experience, the emotional warmth of daring, adventure, easy money, recognition, and the response of fellow-beings. These he may not find in his home, his church or his well-behaved associates. If he lives in a neighborhood frequented by well-dressed crooks and shady characters, he may find in association with them all that his heart desires. He wishes to realize his new-born impulses and ideals. But, behold, confronting him are standards, age-old and encrusted with all the hoary stubbornness of precedent and tradition. Then to his joy he finds alongside these standards others held by certain groups in the community that clash with the old and generally accepted, and that symbolize his own sense of rebellion against established standards and methods of social control. Moreover, in magazines, in the movies, and in novels he finds vivid presentations of different standards from those held by the dominant group, and he is encouraged in his rebellion. *In other words, the elements of emotional*

⁴ White House Conference on Child Health and Protection, *The Delinquent Child* (New York, 1932), pp. 193-224.

⁵ Thomas, *The Unadjusted Girl* (Boston, 1923), pp. 70 ff., 159.

conflict are provided by two sets of standards presented by different groups of society, as well as by the attitudes natural to exploring, experimenting adolescence endeavoring to realize a sense of achievement in personal development. The tragedy occurs when society fails to protect the youth from the disaster resulting from unresolved conflict by giving him opportunity to understand the reason for social standards in sex morality, property ethics, and community rights and responsibilities.⁶

HABITS, CUSTOMS, AND TRADITIONS

In any society most of the individual members behave according to habit, custom and tradition. Habits are more diverse than custom, and have probably a closer connection with the physical and mental organization of each person than have customs. That is not to deny that most habits are the result of training. But when we speak of habits we think more of those types of conduct that are connected with one's own personal affairs, rather than with behavior that pertains to activities in group life. Customs are those types of behavior that were described by Sumner as "folkways" and "mores." Traditions are the verbalized statements as to what has been, and, as applied to conduct, they are rationalizations of customary behavior. Habits are affected by customs and traditions, and the habits of those with prestige may affect custom and tradition. While customs and tradition are important means of social control in well-integrated societies, and play a part in any group, when a society is split up into groups with different customs and traditions, these agencies may produce crime.

The Use of Alcohol. The drinking of alcoholic stimulants goes back to time immemorial. The commercial use of wine is at least as early as the Code of Hammurabi of Babylonia (2380 B.C.). The dangers of excessive use of alcohol soon became apparent. The writers of the Bible, after the time of the writing prophets (eighth century B.C.), condemn the drunkard in unsparing terms. In spite of the praise of wine as a means of increasing sociability, many of the writers of classical times saw the social disabilities that flowed from the abuse of alcohol. In recent times the relationship of alcohol to behavior has been made clear by research in medical science and biochemistry. It has been observed that among persons in any population aggregate there is a differential tolerance of alcohol. Some can drink rather large amounts without disturbance of normal physical or mental functions. Others manifest evidence of "drunkenness" after imbibing a very small quantity. I knew a man who after one glass of whiskey showed clear signs of lack of muscular and emotional control. I knew another who for years had ingested a quart every day without any physical signs except a red nose and bleary eyes, and no signs whatever of intellectual or emotional disturbance. The individuals in any large group would probably distribute themselves

⁶ See Var Waters, *Youth in Conflict* (New York, 1925), Ch. 5.

with respect to tolerance of alcohol on a normal statistical curve. Excessive use of the drug by some people paralyzes the brain centers that control conduct, and produces a delirium. Moreover, its prolonged use often leads to physical and mental deterioration.

The extent of crime due to drinking customs varies in different parts of the world and for different crimes. It has been estimated that at least 60 per cent of the graver homicides, about 82 per cent of the minor crimes of violence, and at least half of the crimes of lust are chiefly due to alcohol.⁷ My findings in a study of murderers and sex offenders in the Wisconsin State Prison indicate a much lower incidence of drinking or drunkenness at the time of the commission of the crime. Only 27 per cent of each of these classes of offenders had been drinking at the time the crime was committed.

A study made in the Iowa State Penitentiary, which was patterned after the Wisconsin study, disclosed that 33 per cent of the lifers professed to be excessive drinkers.⁸

In the Court of Domestic Relations of Chicago for the year ending April 30, 1913, there were 2,432 cases of wife or child abandonment or of failure of parents to support their children. The excessive use of alcohol was an important factor in these family disruptions, 46 per cent of the cases being associated with that factor.⁹ Of 26,672 persons convicted in one year in one state for all classes of crime, 21,863 were under the influence of liquor at the time the crime was committed.¹⁰

Aschaffenburg presents figures indicating that the habitual drunkard is less criminal than the occasional drunkard. He quotes statistics from Copenhagen showing that of the thieves 14.6 per cent were drunk at the time the offense was committed, although they were not habitual drinkers, while among the delinquents who had committed crimes of violence the percentage of drunkenness rose to about 65 per cent.¹¹ He cites similar statistics from the Grand Duchy of Baden. If one studies the statistics for such crimes as assault and battery on the different days of the week, as Lang of Zürich, Switzerland did for the year 1891, he finds that the largest number of such offenses were committed on Sundays and holidays.¹² The following table from Aschaffenburg shows the influence of alcohol on the number of assaults committed on holidays according to the investigations of various students of the question.¹³

⁷ Howard, "Alcohol and Crime," *American Journal of Sociology*, Vol. XXIV, No. 72 (July, 1918).

⁸ Erbe, "A Study of the Social Backgrounds of Life Inmates at Fort Madison Penitentiary," *Journal of Criminal Law and Criminology*, Vol. XXXI, July-Aug., 1940, p. 169.

⁹ Howard, *op. cit.*, p. 74.

¹⁰ *Ibid.*, p. 73.

¹¹ Aschaffenburg, *Crime and Its Repression* (Boston, 1913), p. 75. (Copyright by Little, Brown and Co., 1913. Reprinted by permission.

¹² *Ibid.*, p. 76.

¹³ *Ibid.*, p. 78.

Day Committed	After V. Koblinski		My Own * Statistics: Assault and Battery	After Kürz: Assault and Battery	After Löffler: Crimes of Violence and Sexual Crimes	
	All Crimes	Assault and Battery			In Vienna	In Korneuburg
Sundays	165	121	254	502	289	120
Mondays	68	32	125	182	190	31
Tuesdays	28	9	69	95	128	30
Wednesdays	20	9	62	67	100	26
Thursdays	20	5	62	62	86	30
Fridays	17	4	48	82	110	24
Saturdays	62	25	103	94	128	50
Unknown .....	...	...	...	32	...	...
Holidays .....	...	...	...	126	63	16
Totals	380	205	923	1,175	1,094	327

* That is Aschaffenburg's.

The following table, quoted from Bonger, shows that in a number of European cities Sunday is characterized by the greatest number of assaults:

Day Committed	Vienna (1896-7)	Korneuburg (1896-7)	Canton of Zurich (1890)	Düsseldorf	Worms (1896-8)
Sunday	68	72	60	121	142
Monday	49	12	22	32	57
Tuesday	27	11	} 41	9	34
Wednesday	19	14		9	34
Thursday	19	15		5	35
Friday	18	4	..	4	27
Saturday	28	11	18	35	37

Of course, one must remember that Sunday is not only a day on which people have opportunity to indulge excessively in drink but a day on which contacts between people are much more frequent than on any other day, except a holiday.

Aschaffenburg further points out that most of the student criminality to be seen in German university towns before World War I was due to the abuse of alcohol. Most of the crimes of students were insults, aggravated assault and battery, and resisting an officer. Aschaffenburg believes that these crimes of violence are due to excessive alcoholic indulgences.

Bonger, in discussing crimes of vengeance, has shown that there is a correlation between violent crimes and the acute stage of alcoholism. He quotes Fornasari di Verce, who has shown that in Italy, Great Britain, Ireland, and New South Wales crimes of violence increase and decrease

in direct ratio with the consumption of alcohol. In France this has been pointed out by others.

Studies made in the early part of this century show that of the serious crimes of violence the percentage committed while drunk ranges from 33 per cent to as high as 67.4 per cent. Probably on the basis of these figures from one-half to three-fourths of the crimes of violence were committed while the offender was drunk.¹⁴

While the general opinion is that spirituous liquors are of more importance in the production of crime than malt liquors, Aschaffenburg is convinced that beer is more important than the liquors.¹⁵

In their three follow-up studies of an original group of 1,000 juvenile delinquents, the Gluecks discovered that drunkenness increased from none in the original charge to 13.4 per cent in the first follow-up span, to 35.4 in the second, to 46.3 per cent in the third.¹⁶ Here is evidence of persistently poor adjustments on the part of these individuals.

Further evidence for the assertion that the excessive use of alcoholic beverages is a cultural phenomenon is found in the differential rates between the various nationality groups. For example, the Finns and the Irish are generally recognized as heavy drinkers, and the Italians and Greeks much less so.

In addition to the data on the inebriety of the offender himself, it has been shown that in one sample 40 per cent of the murdered victims were intoxicated at time of death.¹⁷ In three of his series of studies Healy reported the following percentages of one or both parents of delinquents as excessive drinkers: 31, 26.4, and 51 per cent.¹⁸ These are examples of studies showing that the factor of intemperance may be associated with delinquency. The nature of the relationship is not made clear by merely recounting the above data. The real questions are *Why do people drink?* and *Why are not all drinkers criminals?*

While it is true that alcoholism is associated with criminal behavior on occasion, not all alcoholics are offenders. Criminality is an attendant of alcoholism only if the personality is of such a nature as to permit this type of behavior. Most of us have potentialities for behavior that are not known to our daily associates and that may be released under proper circumstances. It is common knowledge that alcohol often suppresses the inhibitions of an individual, and that he may act in a manner that is apparently quite incongruous with the personality overtly displayed when the person is sober. It is quite possible that a carefully conducted investigation of the nature of a personality, the desires and

¹⁴ Bonger, *Criminality and Economic Conditions* (Boston, 1916), pp. 639-643. (Copyright by Little, Brown and Co., 1916. Reprinted by permission.)

¹⁵ Aschaffenburg, *op. cit.*, p. 119.

¹⁶ Glueck and Glueck, *Juvenile Delinquents Grown Up* (New York, 1940), p. 77.

¹⁷ Kilmer, "Alcoholism, Its Relation to Police Work and Jurisprudence," *Correction* (N.Y.), August, 1933.

¹⁸ *Judge Baker Case Studies*, Series I, Cases 2 and 3.

fears that are generally concealed from public gaze as well as the observable characteristics, would enable one to predict the probable form that the behavior of this particular personality would assume when the usual inhibitions were not operating.

Excessive alcoholism usually is the result of one's attempt to find a solution to an undesirable situation. This form of behavior may serve only to complicate the problem further, and bring disaster and disgrace to the family and associates of the inebriate. Nevertheless, he persists in his attempt to find a solution in drinking. In the words of one who has done considerable research on the alcoholic: ¹⁹

Like other forms of personality disorganization, therefore, alcoholism can only be understood as it performs a function in the attempts at social adjustment of the individual. That the consequences of excessive drinking are such as to be only temporarily satisfying, and therefore represent what from an objective viewpoint is inadequate, is of no importance in the understanding of the behavior. What is of importance is the fact that for the moment at least this type of response is within the range of possibilities set by the pattern of personality for the achievement of what to him seem to be essential goals. So long as alcoholism works, he uses it, and when it breaks down, he is likely to abandon it for other devices within this range, or else becomes enmeshed in an ever-increasing drive to make it work until the personality becomes wholly disintegrated.

Therefore, the paramount need in the study of the alcoholic is to see his drinking behavior as a part of the larger pattern of personality disorganization. Thus, some people drink because the total personality is such that it finds it difficult to meet life situations successfully and resorts to drink either to escape the situation or thus to get aid in overcoming it.

But why do such personalities seek escape or help in alcohol? Because the custom of drinking alcohol is in the culture. In a culture having the custom of smoking opium, as in certain parts of China, they will resort to that custom. The custom here provides the social condition favorable to the formation of the habit. Here again it is clear that behavior rests upon a biosocial basis—the biological structure of the organism, which it is often said "has an affinity to alcohol," and the custom that provides the stimulus to reaction.

Then comes the question, Why do only a part of those who drink commit crime? Because their personalities are such that, when alcohol loosens the inhibitions to criminal behavior, they express their basic tendencies.

The Drug Habit. It is generally recognized by those acquainted with the characteristics of narcotic addicts that rape and murder are rarely committed by these persons. Except for stealing, these unfortunate in-

¹⁹ Mowrer, "A Psychocultural Analysis of the Alcoholic," *American Sociological Review*, Vol. 5, Aug. 1940, p. 557. See also Anderson, "The Process of Recovery from Alcoholism," *Federal Probation*, Oct.-Dec., 1944, p. 14.

dividuals are not threats to society.²⁰ An investigation of nearly five thousand drug users in 1936 revealed that only one-sixth of 1 per cent were held guilty of murder or manslaughter, and rape was not even listed.²¹ In their follow-up study of the 1,000 juvenile delinquents, the Gluecks found that of the 540 who were offenders in the third period, only 7 per cent were users of drugs.²² It is also pointed out by many medical authorities that degeneration of mind and body is not a necessary accompaniment of addiction and that the state of being so popularly associated with the addict in this country is largely the result of social factors, and not the direct effect of the drug. While probably only about a third of the addicts in America are employed, it is reported that nearly 90 per cent of those in Formosa in 1905 were regularly employed, and about 70 per cent were married and living with their families.²³ Contrary to public opinion, one cannot recognize the addict by his physical characteristics. Even after careful examination, medical men often are unable to establish the fact that a person uses opiates.

What has been said so far is pertinent to the users of opium and its derivatives. Cocaine and marihuana have different effects on the behavior of the individuals. It has been recognized that these latter drugs are sometimes taken to prepare the individual for some act he would not feel equal to without the "lift" of the drug. A feeling of omnipotence usually accompanies the taking of these drugs, and when under their influence, the person may be tempted to assert himself in a manner of which he would not think when his perspective is unimpaired. Even with these drugs, however, there is danger of overemphasizing the direct effect.

Dishonesty as Tradition. The question of dishonesty among the general populace has been mentioned previously, but it is pertinent to allude to it again in this connection. It is a part of our social heritage and accounts for the behavior of some of the persons who have been apprehended for dishonest acts. In a culture in which law violations are winked at and in which there is little attempt to apply honesty to the day-by-day practices, it is not surprising that criminal activity involving dishonesty should be prevalent.

The query, "How Honest Are People?" heads an article in a publication of one of our penitentiaries. The contents evidence the fact that the prisoner is aware of the prevalence of dishonesty in the non-convict population. The author points out that the coin-box of a pay telephone in a girls' dormitory of a Wisconsin college yielded seventeen slugs, five

²⁰ Lindesmith, "Dope Fiend Mythology," *Journal of Criminal Law and Criminology*, July-Aug., 1940, p. 199. See also, by same author, "A Sociological Theory of Drug Addiction," *American Journal of Sociology*, Jan., 1938; and comment by Brown, *op. cit.*, Mar., 1938, pp. 807-809.

²¹ *Annual Report of the Bureau of Narcotics for 1936*, quoted by Lindesmith, *op. cit.*, p. 200.

²² Glueck and Glueck, *op. cit.*, p. 68.

²³ Lindesmith, *op. cit.*, p. 203.

pennies, and one nickle; that the Pullman Company lost 42,646 towels in a single year; that manufacturing companies continually design containers to make them appear larger than they really are; and that many companies hire persons to spy on their employees lest they cheat.²⁴ We all are familiar with the "fixing" of traffic tickets and with cribbing in school exams. The Federal Trade Commission reports reveal how widespread in the business world are dishonest practices. Business dishonesty is to be recognized as one more facet of the complex of interactive factors that induce dishonesty on the part of the populace. We offer in contrast the following note on the trait of honesty as it operates in another culture.²⁵

In the village of Shan Chia Tien, with its population of about 4,000 persons, situated about 25 miles west of Peiping, there were only two cases of theft during the years of 1927 and 1928. The two thieves were strangers in the village, and came to steal the autumn crops. The elders were unable to recall any serious crime taking place in the village during their life-time, and felt that two thieves in two years is not a good record.

While there is some differentiation between rural and urban areas in this country, a tradition of honesty such as this is not a part of our heritage.

CULTURE CONFLICT

The conflict of cultures has been invoked to explain criminality. Such conflict is a characteristic of modern, dynamic societies. Inventions, modern scientific theories, new philosophies, and the migrations so characteristic of civilization are among the factors of such conflict. For centuries various peoples developed their own cultures in more or less isolation. The customs and traditions that were formed became a vital part of their lives. Since the discovery of America, and especially since the development of easy and rapid means of communication, a shifting of population has occurred that has brought alien cultures into contact. In the Americas especially, people from varied cultures have been thrown into close juxtaposition. The result is that people with widely different cultures have come into closer contact with each other than ever before. The result in some countries is a cultural heterogeneity unknown in human history. The United States is one of the countries in which this heterogeneity is most evident. It is also the nation with the highest crime rate.

Cultural conflict operates to produce crime in two ways: (1) It creates confusion in standards of conduct and in emotional balance for some individuals. This we have already dealt with under the neuroses and psychoses in Chapter VIII. (2) It results in hatred and strife between

²⁴ *The Candle* (Wisconsin State Prison, August, 1940), pp. 10-11.

²⁵ Ching-Yueh Yen, "Crime in Relation to Social Change in China," *American Journal of Sociology*, Nov., 1934, p. 304.

nations and between groups within a nation. It is this phase of cultural conflict with which we are here concerned.

Each culture has its own system of values and its own norms of conduct. These seem to the people of that culture entirely proper; all others seem "outlandish" and improper. For example, the culture of a group of immigrants is brought with them. Their conduct may be quite different from that of those among whom they settle. If so, those who behave according to the culture in which they were reared feel resentment when they are upbraided, ostracized or arrested for conduct perfectly proper to their group but condemned by those of the dominant group or class. For example, a Sicilian immigrant to this country kills the seducer of his daughter according to the norms sanctioned by his people. In this country he is guilty of murder. When the U.S.S.R. extended its law to some Siberian tribes, it required that the women lay aside their veils. Those who did so were killed by their relatives for violating one of the most sacred duties of the tribes.²⁶ The results of such conflicts are to be seen in wars, strife between national groups of different cultural origins, racial and economic strife within a nation, and the hatreds and violence between groups with clashing beliefs.

These are suggestions to explain criminality among immigrants and Negroes, the high crime rate in rapidly growing cities, and those crimes that are associated with group strife. No thoroughgoing research has demonstrated their truth, but that which has been done raises the question as to whether the association of crime with culture conflict may not indicate that there is a cause and effect connection.²⁷ A brief discussion of a few types of cultural conflict situations will show the bearing of these hypotheses.

Nationality and Crime. Perhaps the conflict of cultures is most clearly defined in the instances where groups of persons, for whatever reason, move from one cultural milieu to another. Much more than language differences identify them as new-comers. One aspect of this shift in cultural scene in its relationship to criminality has already been discussed under the heading of the immigrant home. There is, however, a larger aspect. Since crime is arbitrarily defined in each culture, it is not to be wondered at that patterns of behavior established under one cultural setting may be counter to the customs and legal provisions of another. This is clearly demonstrated by the difficulty encountered by the person who, because of the custom of his native country, felt obligated to avenge the rape of his daughter by killing the offender. He found his arrest for what he had thought to be his moral duty quite incomprehensible.²⁸ The

²⁶ Sellin, *Culture Conflict and Crime*, Social Science Research Council (New York, 1939), p. 66.

²⁷ The pieces of research on this problem are discussed by Sellin, *op. cit.*, IV. See also Pound, *Criminal Justice in America* (New York, 1930), pp. 20-25.

²⁸ That this type of personal vengeance is not characteristic of European cultures alone is evidenced by the action of American juries in persistently acquitting the

law is no respecter of alien customs. The fate of the Chinese in their gaming and opium consumption emphasizes this.²⁹

Further evidence of the disorganizing influence of culture conflict of nationality groups is provided by an interesting bit of research done in Chicago. This research concerned the geographic location of some two-hundred sexually delinquent girls, their male partners, and the location where delinquency took place. It was discovered that 86 per cent of the points of the triangles defined by these locations fell on the boundaries of language areas.³⁰ More refined investigations must precede any definite interpretation, but the data are suggestive.

The Negro and Crime. Since there is no evidence that the Negro's biological equipment is significantly different from that of the white, we include this section under the heading of customs.

As we have seen in Chapter IX the Negro is arrested and imprisoned nearly three times as frequently as the whites when the proportions of the Negro in population as a whole are considered. Correction for economic level will reduce this figure considerably, but with all corrections made the Negro's ratio is much higher than that of the whites. Customs show their rôle in the inordinate proportion of Negroes convicted of crime in two respects: (1) the customary attitude of the whites towards the Negro, and (2) the patterns of behavior generated in the latter by centuries of a slave culture in the midst of the culture of the whites. On the latter point one should remember that the crimes of violence attributed to the Negro may grow out of the difficulty the Negro finds in securing justice in the white man's court. The cultural process has not yet adjusted the relationships between the two races. On the former Sellin has written:³¹

When the judge dons his robes of office he is unable to divest himself of his social beliefs and prejudices. . . . The prisoner who stands before him is not

husband and father who kills the seducer of daughter or wife. This attitude reflects the retention of the property concept of marriage, and the willingness of the wife or daughter to submit to the desires of the "seducer" appear to be quite irrelevant. (Vance and Wynne, "Folk Rationalizations in the 'Unwritten Law,'" *American Journal of Sociology*, Jan., 1934, pp. 487-88). The conception of the wife as "...inert, non-personal, passive, and involuntary" is requisite to this position, and, despite stern instructions from the court that the "unwritten law" is of no consequence, it figures in the reasoning of the jury. To many of the rural peoples of this country, death to the offending person is preferable to action in the divorce courts. (*Ibid.*, p. 492.)

²⁹ But Stofflet, in a study made in New Jersey in 1935 of the nationality and cultural differences of the offenders, demonstrated that the type of offense of the immigrant that was characteristic of this group in the native land does not persist in subsequent generations. These later generations become criminal in the manner followed by the native-born, that is, they become Americanized in criminality. The significant shift in type of offense has been largely away from crimes of violence. Stofflet, "A Study of National and Cultural Differences in Criminal Tendency," *Archives of Psychology*, No. 185, 1935.

³⁰ Crook, "Cultural Marginality in Sexual Delinquency," *American Journal of Sociology*, Jan., 1934, p. 493.

³¹ "Race Prejudice in the Administration of Justice," *American Journal of Sociology*, Vol. XLI, Sept., 1935, pp. 212-213.

merely an offender who must be dealt with according to rules laid down by lawmakers, but he is a person who represents a class or group in society toward which the judge may have certain feelings, perhaps of disapproval or approval.

He further points out that the judiciary in the United States is largely composed of members of the "old" immigrant stock, and that the peoples of the "new" immigration and the Negro are of a different cultural setting. The study of the length of sentence for similar offenses reveals the workings of the human nature of the judges, which has been developed in accordance with the culture as defined by the dominant group.

In the South, where the bulk of the definite sentences were assessed, the foreign-born white offender was given more severe sentences than the Negro in all instances except those of liquor violations. The Negro was given more severe sentences than the native-born white only in three categories, those of rape, other sex offenses, and burglary.⁸²

In the North and on the Pacific Coast, the indeterminate sentence was given most frequently. Under this type of sentence the Negro received on the whole longer sentences than the foreign-born white. Homicide is the notable exception.

The explanation offered is that the paternalistic attitude toward the Negro in the South keeps the sentence rather low, while the tolerance for the foreign-born white has never been great in the southern regions. It is the opposite in the North, for the Negro is an "outsider," and the foreign-born white shares more fully in the culture.⁸³ In the cases where the maximum sentence was imposed, the foreign-born white received longer sentences for homicide, robbery, burglary, and forgery, while the native white did so for rape, assault, larceny, other sex offenses, and liquor-law offenses.⁸⁴ Refined statistical analysis is necessary to discover the hidden variables, but the trend to longer sentences for certain offenses among the Negro and foreign-born white remains significant. It may be suggested that the foreign-born offender is treated more harshly for those offenses where the security of the dominant group is challenged. But rape, assault, sex offenses other than rape, and so on, less likely to challenge the position of the "old" immigrant group but more likely to be confined to the group of the offender, are punished less severely.

Certain Beliefs and Sentiments. A part of the culture of every people are certain beliefs and sentiments. These vary from society to society, and from group to group within a society. If these beliefs and sentiments are strongly held and clash with those of another group in close contact, they may furnish to some persons the stimulus to crime.

Among the beliefs that may promote crime are that property is robbery, that every one who has any wealth has secured it by improper

⁸² *Ibid.*, p. 215.

⁸³ *Ibid.*, p. 215-216

⁸⁴ *Ibid.*

means, and that the whole product of industry belongs to labor. One will find among criminals such a philosophy of property and cynical beliefs of this nature. When such ideas are held, they become defense reactions to the prohibitions of the law. It is impossible to say how many of our criminals hold such beliefs. The testimony of those who are acquainted with criminals, however, is that such beliefs are quite universal with the habitual criminal.

The philosophy of the hardened criminal has been formed by the group in which he developed. The habitual criminal is free from remorse and has his own justification for his act. Dostoeffski says that the criminal is subject not to the public opinion of the non-criminal population but to that of his own class. He looks upon his punishment not as a disgrace but as a kind of martyrdom for his class.³⁵

The criminal comes to look upon his crime as a *class struggle* in which he finds compensation for his sufferings. Ellis cites a young French brigand, of the days of Charles IX, who said as he ascended the scaffold that he was innocent, as he never robbed poor people, only the aristocracy, whom he described as the greatest robbers in the world. Another said, "We are poor rogues, and so hanged, while others, no less guilty in another way, escape."³⁶

Usually these confirmed criminals are *cynical and bitter*. They believe that in society "gold reigns alone," that "the social virtues are cowardly vices," that "an open assault on a rich man" is "less ignoble than the cautious combinations of fraud," that the criminal takes chances similar to those taken by honest men, and sometimes fails. Some appeal for their justification to "natural" justice as against an "artificial" justice. Others believe they are sent of God to punish the avarice of the rich. Most of them believe that the non-criminal part of society is as they, only the others have not been caught.

Moreover, in economic affairs the thief often reflects a kind of *primitive morality*. Said one, "In the face of necessity all things belong to all." Add to that the belief held by many, both inside and outside prisons, that there is no such thing as honesty. Rather widespread in some classes of society is the belief that religion, patriotism, and law are devices for the exploitation of the poor and reckless by the rich and powerful. In other words, the institutions of society are conceived to be instruments of tyranny and injustice.

They compensate for their inferior position in life, for the opportunities denied them, and for the injustices in the established social order by flaring out against those who have benefited by that order, and they justify themselves by their beliefs and the warmth of their sympathy for the oppressed. Their sentiments and their beliefs are class-bound.

With such beliefs current among wide classes of society, held un-

³⁵ Ellis, *The Criminal* (New York, 1910), pp. 237, 238.

³⁶ *Ibid.*, p. 238.

critically and felt deeply, is it any wonder that some fall into crime? There is just enough truth in these ideas to turn the balance frequently in favor of delinquency. Rationalization probably plays a significant part here also.

There are many *customs and beliefs in rural communities* that, if put into practice in a large city, will involve one with the law. The country-bred child who was doing nothing worthy of reprobation when he entered his neighbor's orchard for a few apples, so long as he did not destroy property, finds that when he goes to the city he cannot take apples off the fruit-vender's cart without becoming a delinquent. Moreover, in the lower strata of any population there are always people who believe in the innocence of taking things from those who are in superior positions. The Negro has been accustomed for generations to take part of his living from his master. Sometimes a clerk believes he is being underpaid and therefore feels justified in stealing from his employer. Some of the poor have no conscience against taking coal or other necessities from their rich neighbors or the corporations. Some soldiers develop property morals at variance with those that obtain in their home community. Many men in the army learned habits of taking things needed from a neighboring unit without the formality of a requisition. Some of them later got into trouble by following the same habits at home.

Vendettas and Feuds. In certain societies one is disgraced if he does not avenge an insult to, or the killing of, a relative. Hence crimes of violence continue generation after generation unchecked. The feuds of the Kentucky mountains and the vendettas to be found in Italy and the Italian districts of the United States are illustrations of such customs and beliefs.

Speaking of the feuds in the Southern highlands of the United States, which have attracted so much attention, Campbell shows that the homicide rate for the mountainous is greater than that for the non-mountainous parts of the same states in Kentucky and North Carolina, while it is less in Maryland, South Carolina, Tennessee, and Virginia. However, if the Negro homicide rate for the non-mountainous parts be excluded, the homicide rate in the mountainous parts is higher in all the states than in the non-mountainous.

Campbell offers some interesting explanations of this fact. He says there has always been an intimate connection between whiskey and feuds, that the carrying of arms by mountaineers as a part of their manhood creed is a contributing cause, that miscarriage of law and justice is the greatest cause of the continuance, if not of the origin, of feuds, and that the mountaineer is an individualist by reason of his isolated social life. The whole picture of highland society as given by Campbell shows that the mountaineer believes that justice depends not on the agencies of government, but upon the straight shooting of himself and his relatives.

Tie up with that his code of personal honor and you have a social situation that explains the feud with its bloody trail in these American highlands.⁸⁷

Growing out of antiquated social customs and ideas, produced by the lack of well-organized public agencies of judicial control, these vendettas or feuds menace the peace and order of whole communities. They characterize backward and criminal communities. The Camorra of Italy originated among incarcerated criminals as early as 1568.⁸⁸ The Klu Klux Klan in the United States was an extrajudicial organization intended to supplement the established social agencies in repressing what the Klan regarded as undesirable elements in the population. All such organizations spring up in uncivilized societies or in those that for any cause are becoming disorganized. From the point of view of social development they represent methods of social control characteristic of less developed society.

CLASS HATREDS

When America was younger, and all were poor together, democracy prevented the growth of distinct classes and the consequent class hatred. With the development of commercialism and industry the close relationship between different economic classes such as were seen in hand industry before the industrial revolution ceased. In consequence of the extreme specialization of occupation and the introduction of machine industry on a large scale, class interests have developed and class strife has grown. As a defense against the operations of the capitalist on the one hand and the sabotage of the workman on the other, class strife has become one of the marked features of every modern industrial society. Out of this strife grow certain types of crime and the destruction of those standards of conduct which make for social unity and safety. Says Garofalo on this point: "Certain social causes may operate to retard or even to arrest moral progress. Among these, and not the least dangerous, is the propaganda of class hatred, the preaching of revolt against all the principles of the social and moral order—a movement for which the communists, before turning reformists, shared the responsibility with the anarchists. Not until these doctrines are stripped of their violence will civilization in the true sense of the word be enabled uninterruptedly to continue its progress."⁸⁹

In every period of social and industrial unrest, of political or economic oppression, of *class hatreds* arising from whatever cause there appear beliefs which grow out of class irritations and are often responsible in turn for the accentuation of such hatreds. Such beliefs arouse

⁸⁷ Campbell, *The Southern Highlander and His Homeland* (New York, 1921), pp. 110-119.

⁸⁸ Lombroso, *Crime: Its Causes and Remedies* (Boston, 1912), p. 212.

⁸⁹ Garofalo, *Criminology* (Boston, 1914), p. 136. (Copyright by Little, Brown and Co., 1914. Reprinted by permission.)

resistance to whatever class or authority is identified with what is felt to be oppression. The Hebrew slaves in Egypt, stirred by the preaching of Moses and Aaron to believe that God was making use of their sufferings to get them out of Egypt to the Land of Promise and that He had commanded them by subterfuge to rob the Egyptians of their belongings, lied to their Egyptian neighbors, borrowed their property, and stole away with it. The modern I. W. W. and the Communists in the United States hold a theory of class strife. Mr. Houd in a publication of the United States Department of Labor, speaking of the hobo laborers in the lumber camps of the West Coast, says, "It is the hobo workers who present the really dangerous element in the labor problem. They are foot-loose rebels who no longer recognize the ordinary conventions of modern society but challenge the whole industrial system of which the relation of employer and employee forms a part. That challenge may be but the dumb resentment of the failure and outcast against the man who has succeeded, or it may be the very much more dangerous challenge of the I. W. W., which has a very positive philosophy to take the place of *laissez-faire* and respect for private property. The I. W. W. refuses to accept any of the assumptions of the employer or of society, and declares eternal and uncompromising war against the whole system in which the employer finds a place."⁴⁰

At present the divergent economic beliefs of capital and labor, especially of the extremists in each party, move them to activities which sociologically we may define as criminal. Such beliefs result in class wars, strikes, lockouts, destruction of property, and slugging of laborers by hired "bouncers."

Moreover, within every large aggregation of population in cities made up of diverse nationalities and of people with radically different economic levels there develop wide gaps in fundamental interests, in behavior patterns, and in attitudes. The "gold coast" and the slum develop different social values and breed different attitudes toward social aims. There grow up two or more societies: the great society, dominating the entire community, setting the standards, making the laws, and arranging the agencies of social control; and usually smaller groups with other attitudes and values in rebellion against the former. The rich despise the poor; the poor hate but envy the rich. The American dubs the recent immigrant "wop" or "sheeny"; the immigrant often flares back at the American with "the Duke," "the gentleman," "the princess," and "God Almighty." Class hatred thrives with the growth of defense mechanisms that engender strife and provide a seeming justification for antisocial acts.

This is, of course, part and parcel of the cultural conflict that sponsors much of the disorganization of America's populace. However, it is easy to stress unduly the degree to which the underprivileged are articulate

⁴⁰ "Industrial Relations in the West Coast Lumber Industry," *Bureau of Labor Statistics Bulletin*, No. 349 (Washington, D. C., 1924), p. 53.

about the discrepancies of economic and social advantage. To attribute a large percentage of the crime in this country to conscious revolt against this disparity is, it seems, to go beyond the scope of the available facts. Delinquency is largely a matter of expediency, not of resentful design.

Religion. Numerous studies have been made to show the relative number of adherents of various religions in the total number of criminals. Certain studies purport to show that per each 100,000 of the population of the respective religions the Catholics are most numerous, Protestants next, Jews next, and those with no religion least numerous. When these bare figures are analyzed, however, it becomes apparent that other factors than religion explain the difference. Usually the poorer the people, no matter what the religion, the higher is the rate of criminality. Aschaffenburg has shown that while the Catholics are relatively more criminal than Protestants or Jews, they are also the poorest in the parts of the German Empire studied by him. Moreover, the low criminality of the Jews, except in crimes against property connected with their commercial life, is to be explained in part by the close control exercised over them by the religious authorities of their communities.⁴¹

Offense	Number Sentenced to 100,000 of the Population Over 10 Years Old				
	Protestant	Catholic	Jew	Not Members of Any Religion	Total Population
All offenses	308.6	416.5	212.7	84.2	337.3
Theft	40.0	54.8	25.5	9.6	43.9
Aggravated theft	19.9	24.0	12.7	5.2	20.7
Receiving stolen goods	2.6	3.5	9.2	0.7	3.0
Embezzlement	8.6	9.3	13.1	1.9	8.7
Fraud	2.4	2.5	3.9	0.4	2.4
Offense against public decency	1.9	3.4	2.0	0.5	2.4
Minor sexual offenses	1.2	1.0	0.3	0.2	1.0
Rape	1.5	2.2	1.5	0.7	1.8
Sexual crime with persons under 16	0.3	0.3	0.1	0.0	0.3
All sexual crimes	25.9	7.1	4.1	1.6	5.7
Rebellion	5.1	37.0	13.2	12.2	29.0
Assaults	74.4	98.2	43.2	20.1	81.1
Serious assaults	8.5	11.0	3.9	1.9	9.1
Homicide and murder	0.1	0.6	0.5	0.1	0.5

It should be noted, however, that only as religion is socialized, that is, directed to ethical ends in individual conduct and social organization

⁴¹ Aschaffenburg, *op. cit.*, pp. 51-61. (Copyright by Little, Brown and Co., 1913. Reprinted by permission.) Bongers has made the most recent study of religion and criminality, a study of 126,000 individual delinquents in the Netherlands from 1901 to 1909. The table is his.

and ideals, does it produce good conduct. If religion is conceived of as a kind of magical means of getting supernatural aid to reach one's ends, no matter whether those ends are social or antisocial, then religion may be found allied with all kinds of crime. Then the prostitute may have the crucifix above her bed, the murderer and the robber may pray for help in their nefarious designs. Only a religion purified of selfishness and shot through and through with social ethics can have any large bearing on the reduction of crime.

CULTURAL LAG

Many of these social factors discussed in the last two chapters grow out of the disintegration of the social structure due to what Ogburn has called "cultural lag." By "disintegration of the social structure," is meant the loosening of the social bonds of control by which the individuals in a society are bound together in a system of well-recognized rights and obligations supported by sanctions quite universally respected. By "cultural lag" is meant the development of cultural equipment—"patterned material artifacts" such as new and radical inventions—that disturb the distribution of the population, the economic patterns of life, at a faster rate than cultural changes fitted to these new inventions can be made. For example, when the production of goods occurred in the domestic household, certain customs governing the relations between employer and employee gradually came to be universally accepted; family life was regulated by customs suited to that form of manufacture. But when the steam-engine was invented, and later electricity was harnessed to supplant animal- and man-power, production of goods was transferred from the household to the factory. The old customs and traditions were no longer adequate to govern the relations between employer and employee, between the groups of people attracted from everywhere to work in the factories and to live in the large cities. Scientific theories sprang up at variance with the traditions and mythologies hitherto a part of the controls that welded individuals and groups into a unified whole. New professions sprang up with no precedents as to the proper behavior to be observed by their members for the general welfare, for instance, doctors, lawyers, bankers, industrial magnates and managers. Occupations became greatly diversified without any long-established rules regulating the interactions between them. Hence in our highly dynamic society newly made laws have to be imposed to regulate these relationships. Laws are never so effective as custom and tradition in commanding the heartfelt assent of the people to be controlled. The result is friction between individuals and groups in our modern society, and conflict between the old and the new as dominating means of control.⁴²

⁴² Gillin and Gillin, *An Introduction to Sociology* (New York, 1942), Ch. 6; Brown, *Lawyers and the Promotion of Justice* (New York, 1938), pp. 219-222.

WAR AND CRIME

Any one who has lived through a war large enough to enlist the attention and energies of practically the whole population will need little argument to be convinced that war is one of the most potent factors in producing crime. Consider how it disorganizes the whole structure of civil society. During a modern war the economic structure is reorganized to produce, not goods to meet the needs of the people, but munitions of war. Consumers goods are scarce, prices go out of sight, and those with fixed income suffer economic distress. Even those with high wages and increased incomes find that their dollars will buy less than in peace. Inflation reduces the value of their real incomes.

Also reflect on the disruption of the labor force. Millions of men are taken out of industry into the armed forces. Other millions shift from peacetime occupations to war industries. Cities grow in population at unprecedented rates resulting in unsanitary and overcrowded housing conditions. Women with families go into industry in great numbers with resulting neglect of their children. New cities spring up around war plants. Housing cannot be provided rapidly enough to care for the workers and their families. Married men unable to find housing for their families often leave them and live like single men in rooming and boarding homes near the factories, with consequent strain on the domestic ties. Because of the high wages paid by the war industries, hired labor desert the farms for work in the war industries, or they go into the armed forces. The whole rural economy is disrupted. Along with this goes the inability of the farmers to get new machinery or repairs for that which they already have. We were disturbed by the migration of people from the "dust bowl" during the depression of the 1930's, but that was only a small incident compared with the fluidity of workers in World War II.

Consider also the disruption of the ordinary social ties experienced by those called from farms, factories, and classrooms and sent into the armed forces. Even while in training most of these individuals live in barracks without the ordinary ties of home and family; almost all the habits inculcated in home and neighborhood are disregarded; and in their stead are placed those contrived to produce a "good" soldier or sailor. The usual channels for the satisfaction of primary biological impulses, of those emotional satisfactions that form the very foundations of personality, are clogged up. If these men are to satisfy their sexual urges, they must do so in illicit ways. Hence the flowering of prostitution about every camp and in every port. Hence also the growth of illicit relations between those in uniform and thoughtless girls fascinated by a uniform, and wives hungry for their men in far distant places, and hence the demand of the uniformed men over seas for "pin-ups" around which their imaginations may play in the absence of real flesh-and-blood women of their kind. The whole personality tends to become distorted, because the

long-accustomed and socially accepted methods of expressing fundamental longings are in the discard. True, the USO, the churches, the lodges, and other organizations near the camps have tried to provide some substitutes. They try to equip places where uniformed men may meet women, where they may find some of the ordinary means of recreation, and some of the kindly ministrations of motherly women, surrogates for their own mothers and sisters. But at the best these are but sorry substitutes for those intimate associations they have known in their own homes and communities. The moral stays and the kindnesses provided by strangers lack something of the strength and emotional warmth of own wives, sisters, fathers, older brothers, and even of neighbors whom they have long known and who have known them. Loneliness even in the midst of a multitude, and of a multitude constituted of people of the greatest good-will, gnaws at the very springs of character. True, God is not far from every one, but most of us are like the little girl who at her bedtime had been sent upstairs to bed with only her doll, Happy, for company. She kept calling down for some one to come up and share her loneliness with her. Her mother finally argued with her, "Now, darling, go to sleep. You have Happy, and God is right beside you." The child replied, "I don't want Happy, and I don't want God. I want somebody with a skin face."

But it may be replied that statistics of crime shrink during a war. True, the crimes characteristic of the ages of those in the armed forces diminish during a war. Why? These men are out of civil life, and only the crimes of civilians are recorded in the statistics. No court-martial figures are there. Also many of the men who would be guilty of crime in peace are under the strict surveillance of the Army and Navy. But notice what happens after the demobilization of the troops. After World War I there was a startling "crime wave." The troopers had another difficult adjustment to make. Jobs were to be found. The broken domestic and neighborhood ties had to be restored. New adjustments to civilian life quite at variance with the habits learned in the Army and Navy had to be made. They had been taught to hate and to kill. Now hating and killing were tabooed. If they wanted something from another detachment of the services, they simply took it. When they returned, if they stole a neighbor's chickens, often they found themselves in jail. It was hard to settle down to everyday humdrum life after the excitement of war. Often they had difficulty in finding a job; and frequently economic depression follows the treaty of peace.

Furthermore, even during war there is a decided increase in delinquencies committed by women and children. In World War I in a number of countries of Europe a decided increase in juvenile delinquency occurred.⁴³

⁴³ See *Juvenile Delinquency in Certain Countries at War*, United States Children's Bureau Publication, No. 39 (Washington, D. C., 1918).

Since the outbreak of World War II there have been reports of an increase in juvenile delinquency in England and Wales and from certain cities in the United States. In England and Wales during the first year of the war there was an increase of 41 per cent in the number of juvenile delinquents under fourteen years of age brought before the courts, and of 22 per cent of those between the ages of fourteen and seventeen. From 1938-1939 to 1940-1941 the number of juveniles between the ages of eight and fourteen found guilty of indictable offenses increased for boys over 56 per cent; for girls, 88 per cent; for those between the ages of fourteen and seventeen the increase for boys was 38 per cent, and for girls, 125 per cent.⁴⁴

The United States Children's Bureau on the basis of reports from eighty-two courts, each serving areas of 100,000 or more population, points out that the number brought before these courts for juvenile delinquency increased 16 per cent in 1942 over 1940. The cases of boys increased 11 per cent; of girls, 38 per cent. This increase was greater in war production centers than in areas of stable or decreasing population in the proportion of 18 per cent to 9 per cent respectively.⁴⁵

This situation is not hard to understand if one reflects on the disturbed conditions induced by war. For the juveniles in addition to the circumstances cited above applying to the whole population there were (1) the emotional excitement arising from propaganda appealing to adolescents to get them into the armed services; (2) the restlessness in school, testified to by all teachers, owing to the frustration of desire to be engaged in what seemed like more important work in winning the war; (3) the high wages of young people engaged in war work with little guidance or experience in how to spend that money constructively; (4) the relaxed supervision of mothers by reason of their being engaged in war activities and the disturbed conditions of the older adolescents and adults with their examples of moral let-down; and (5) the drawing off into war industries and the armed services of the natural leaders of children and youth in homes, in schools and in supervised recreation.

Arthur E. Fink, Regional Supervisor, Social Protection Section, Federal Security Agency, Birmingham, Ala., has well described the situation. He tells ⁴⁶ of talking with a boy born in 1920

who as a child had lived through what to his parents and the rest of us was a pretty feverish post-war decade with first bust and then boom into what some reputable economists called a new economic era. Then bust again, and the depression of the thirties. . . . His childhood seemed all right for a while, but he didn't see much of his father and mother and finally when he was twelve years old they were divorced. The family had been on relief when his father was laid

⁴⁴ *The Christian Century*, June 16, 1941. Fry, "Delinquency in Wartime England," *National Probation Year Book 1942*, p. 74.

⁴⁵ U. S. Children's Bureau Publication, No. 301 (Washington, D. C., 1943), p. 2.

⁴⁶ "Youth Problems in War Production and Camp Areas," *National Probation Association Yearbook, 1942*, p. 60.

off. His mother was on a WPA sewing project. His only sister had dropped out of school at fifteen. The NYA had helped him finish high school, and just as he and his mother were getting on their feet he got called to the army. At one point he exclaimed, "Mister, this sure is a cockeyed world." As I thought of those years between two wars I could not help agreeing with him....

It is a world and a time in which dislocations are occurring everywhere. His younger brothers and sisters by the hundreds of thousands, baffled, bewildered, confused, frustrated, eager, ambitious, unheeding, devil-may-care, are trying to find a place in it. Those who turn up in war production or camp areas are the especial concern of individuals interested in human welfare during this period of national crisis.

In the camp communities, where, as we have seen, the greatest increases in delinquency seem to have occurred, are found ⁴⁷

uncounted numbers of young people, chiefly girls and young women, who are swarming to camp areas.... They come to visit boy friends at camp or with a girl friend who has a girl friend who knows a boy friend in camp. They come, drawn to the camp in search of adventure. They come running away from emotional starvation and frustration of their own homes and their own lives. They come because they are escaping a past, blindly, caring nothing for an uncertain future, anxious to live only in the present. They come because they are human beings in an upset world.

Often their boy friends have left for another camp. Soon they are out of money. Sometimes there is a cheap job for them at a wage on which they cannot live. Often they can find no jobs. Sometimes deserted and disappointed wives flock to such areas. With hordes of young men on their days off from the camp there is no difficulty in these girls picking up enough to live on by what has been called "the oldest profession." And many a girl who in her home community has not held her virtue cheap finds a boy friend who seeks satisfaction of his "biological imperative" with a girl as much at sea emotionally as himself. For both, the home community ties no longer hold them in the straight and narrow way. The girl gets caught by the local police, and her arrest is counted in the statistics; the boy gets turned over to the officials of the camp, but his offense does not appear in the statistics. But the war has caught them both in its social and economic maelstrom.

If the effects of war on human conduct were confined to the war period, they would be serious enough. But the real harvest of the economic and social disorganization incident to war comes after peace is declared. Demobilization of the armed forces, readjustment of the industrial machine to the making of consumer goods, slackened employment, unrest, and disillusionment produce conditions favorable to a great increase in criminal statistics. At least, that is what has happened after every great war of which we have a clear record. Witness the reports of crime after the Hundred Years War, the French Revolution, and the Napoleonic wars, the War Between the States in this country, and

⁴⁷ Fink, *ibid.*, pp. 61, 62.

World War I. It will be a new thing under the sun if after World War II the same phenomena do not appear.

THE RÔLE OF THE SOCIAL FACTORS

In conclusion, what shall be said of the importance of the social factors? It must be confessed that we do not know their importance relative to the other conditions that the criminal has experienced. Let us hope that the time may come when by the use of more refined methods we may be able not only to isolate those factors that actually set off the organism towards criminal activity, but also to determine their relative weight. Until that time arrives the best we can say is that such and such conditions are significantly associated with criminality.

However, since the biological organism is largely unalterable, the non-biological factors become, for practical purposes, the dependent variable. That is, in any program designed to reduce the amount of abnormal behavior, in this case criminality, the factors amenable to alteration to this end are the social factors. This conclusion is the logical outcome of our belief that society is the source from which the social values, ideals, fears, desires, and so on, get their definition. A concomitant step is the abandonment of the time-honored belief in individual responsibility that is the omnipresent attendant of the doctrine of free will.

QUESTIONS AND EXERCISES

1. Analyze the crimogenic community influences in Township A described in the text.
2. Assume that it is true that people are alcoholic because they are defective or nervously unbalanced; what bearing would that assumption have on our attitude toward alcohol as a beverage?
3. Suggest a program for the cure of feuds and vendettas: (a) In the Kentucky mountains; (b) in our great cities.
4. On the basis of your study, compare the importance of the social factors with the others previously discussed.
5. Discuss pro and con the proposition that prohibition created the gangster and the crooked official.
6. Analyze the situation in a great city that produces gangsters.
7. Why should a boys' gang develop into a criminal gang?
8. Suggest a program whereby the formation of criminal gangs could be prevented.
9. Why is it that the social factors do not make criminals of all those who are subject to them?
10. Why does the number of male adult crimes diminish in wartime? Why does the number of female and juvenile crimes increase during a war?

Book Two
PENOLOGY

Part III

THEORIES OF CRIME AND PUNISHMENT

Chapter XIII

CRIMINOLOGICAL AND PENOLOGICAL THEORIES

Man's primary reaction to injury is impulsive. Some one strikes me, and without reflection my first impulse is to strike back. But man is also a thinking being. He likes to have a reason for his experiences and his actions. We say that he "rationalizes" the phenomena of the universe. Likewise he "rationalizes" his and others' actions. Sometimes his theories are the result of reflections on the actions, and sometimes actions grow out of the theorizing he has done. As we shall see in Chapter XX, the punishments he has inflicted on those who violated the social codes have been outgrowths of the whole cultural configuration of the society.

As we shall show in Chapter XV, the explanation of criminal behavior varies with the changing context of the total culture of a society. That is true also of the theories and methods of punishment. If a society is organized on the tribal basis, with the recognized social bond that of real or fictitious blood relationship, its theory of punishment of the violators of the code of conduct will be that of blood vengeance, and its methods those of retribution or retaliation. If it holds a theory that the Supernatural Powers are concerned in their behavior and that violation of the social code angers those Powers and thus menaces the welfare of the group, then theory will demand expiation of the offense by eradication of the offender. If a high value is placed upon the integrity of the family and upon obedience to the head of the family, the theory of what shall be done to one who flouts these values will be different from that which prevails in a society in which high values have been placed upon other things, such as property. So also, will the punishment, let us say, for adultery be more severe in the first case than in the latter. Likewise theories and methods of punishment will vary with the theories and forms of political and economic organization. So also, if a society values business success, as measured by the wealth of the individual and what that wealth will provide for the individual and his family, more than faithfulness to the mate or devotion to the welfare of the children, theories of punishment for property crimes and methods of punishment will be different from those of a society in which family integrity has the highest place in its system of values. Likewise in a society in which sci-

ence holds a high place in the estimation of the group, the theories and methods of punishment will be other than those prevailing in one in which traditional, religious observances are most highly valued.

Purposes of Punishment. It is apparent that in the course of history five theories of the purpose of punishment have developed: (1) retaliation or retribution, (2) expiation, (3) deterrence, (4) reformation, and (5) protection of society.

These five theories are not mutually exclusive. Thus retaliation, or retribution, was the result of individual or group response to injury, largely reflexive in nature. But the thinker challenged to give a reason for such action urged that its purpose was to satisfy the injured feelings of the offended. Likewise expiation, deterrence, reformation, and even retaliation have been looked upon as protecting society. The practices grew out of man's organic response to injury (retribution or retaliation), or out of his beliefs about fear of the god's anger at certain acts of the individual or the group (expiation). It is doubtful that either all individuals in a group or all societies conceived of punishment as a means of protecting society. Only the thoughtful individual, and a society in which the theory of its protection had become traditional, conceived of punishment for crime in that fashion.

Theories of Punishment. Theories of punishment are attempts to rationalize society's procedure with reference to the criminal. The theories, therefore, are affected by the culture, that is, by current beliefs, philosophies, religious conceptions, and contemporary science. If, therefore, we are to understand the penal philosophies that developed in the course of social history, we must examine the question as to how the religious, scientific, and philosophic beliefs of various ages and peoples affected the theories of punishment. In other words, we must know the sociology of these theories. In Western civilization four great influences have molded penal theories: Greek philosophy, Roman jurisprudence, the Judæo-Christian religion, and modern science.

PRE-CLASSICAL THEORIES

The conceptions of primitive religion affected society's treatment of the sinner and the criminal. Notice how Judaism's developing moral and religious conceptions brought in the notion of redemption of the sinner. Consider next the effect on penal philosophy of the amalgamation of Judæo-Christian doctrines with Greek philosophy and Roman legal doctrines when Christianity spread over western Europe.

In the course of the first twelve centuries of Christianity, classical philosophy, Roman law and administrative practice, and Christian doctrine fused. The result was medieval theology, which in the disturbed period called the Middle Ages molded all thought, including law and penology. Earlier alongside the Roman law, canon law was developing. On the decay of the Empire canon law coalesced with Roman law.

The Secular Theory of Punishment. Resting upon the primitive retaliatory practice and justified by the remarkable cathartic theory of the purpose of punishment implicit in the theory of individual expiation, the penology of Jewish, Grecian, Roman, and Teutonic peoples only developed further the theory of social expiation and added to it the purpose of deterrence.

One may see in Aristotle an example of the way in which philosophy took the current notion of retaliation and transformed it into a theory of punishment. Book V of his *Nicomachean Ethics* is devoted to a discussion of justice and injustice. In Chapter 8 of Book V, Aristotle discusses "corrective justice." In his analysis of the nature of justice, Aristotle carries over into the relations between men his conception of punishment as a means of restoring the balance between pain and pleasure. He says:

But the Just which arises in transactions between men is fairness in a certain sense, and the Unjust unfair, only not in the way of geometrical proportion but of arithmetical. Because it makes no difference whether a robbery, for instance, is committed by a good man on a bad or by a bad man on a good, nor whether a good or a bad man has committed adultery: the law looks only to the difference created by the injury and treats the men as previously equal, where the one does and the other suffers injury, or the one has done and the other suffered harm. And so this Unjust, being an inequality, the judge endeavors to reduce to equality again, because really when the one party has been wounded and the other has struck him, or the one kills and the other dies, the suffering and the doing are divided into unequal shares; well, the judge tries to restore equality by penalty, thereby taking from the gain.

For these terms *gain* and *loss* are applied to these cases, though perhaps the term in some particular instance may not be strictly proper, as gain, for instance, to the man who has given a blow, and loss to him who has received it: still, when the suffering has been estimated, the one is called loss and the other gain.

And so the equal is a mean between the more and the less, which represent gain and loss in contrary ways (I mean, that the more of good and the less of evil is gain, the less of good and the more of evil is loss): between which the equal was stated to be a mean, which equal we say is just: and so the Corrective Just must be the mean between loss and gain.

Thus, corrective justice to Aristotle is the means whereby the loss suffered by the wronged man is compensated. Suffering by the offender restores the balance between injured and transgressor.

But Aristotle sees clearly that retaliation for injury does not in all cases restore this balance. He says:

There are people who have a notion that Reciprocation (or Retaliation) is simply just, as the Pythagoreans said: for they defined the Just simply and without qualification as "That which reciprocates with another" (i.e., an eye for an eye). But this simple Reciprocation will not fit on either to the Distributive Just, or the Corrective (and yet this is the interpretation they put on the Rhadamanthian rule of Just:

"If a man should suffer what he hath done, then there would be straightforward justice"),

for in many cases differences arise: as, for instance, suppose one in authority has struck a man, he is not to be struck in turn; or if a man has struck one in authority he must not only be struck but punished also. And again, the voluntariness or involuntariness of actions makes a great difference.

But in dealings of exchange such a principle of Justice as this Reciprocation forms the bond of union; but then it must be Reciprocation according to proportion and not exactly equality, because by proportionate reciprocity of action the social community is held together. For either Reciprocation of evil is meant, and if this be not allowed it is thought to be a servile condition of things: or else Reciprocation of good, and if this is not effected then there is no admission to participation (i.e., of service) which is the very bond of their union.¹

It is clear, then, that Aristotle has attempted to rationalize the practice of his day in terms of retaliation, admitting, however, the modifications necessary by reason of the different social status of offender and injured, or because in one case injury is intentional and in the other unintentional, or in view of the changed social relations brought about by a good deed done to another. In all his discussion there appears the generalization that upon men's relations one to another depend the unity and stability of society. The only modifications made in the retaliation theory up to this time were certain limitations upon private and group vengeance to prevent disastrous social results. For example: the old law of an eye for an eye, a tooth for a tooth, limb for limb, and burning for burning, was a limitation intended to assure that the wronged should not wreak vengeance greater than the injury he had suffered. Again, the right of sanctuary, while it gave time to deliberate whether the injury was intentional or unintentional, did not do away with the theory of retribution. If, after deliberation, it was found that the injury was intended, then the priest stood out of the way and permitted the avenger of blood to execute the penalty.

Nevertheless, these and other methods unquestionably tended to shift the problem of punishment from the merely objective question as to what the offender had done to the subjective one of his intent. If he had committed the crime unintentionally, the beginning of an attempt to individualize his punishment was made by right of sanctuary and a money composition for the crime. This modification of the original objective basis of punishment did not, however, take into account the personality of the offender. There was no question in the appraisal of the offense as to its moral quality, nor was there any attempt to individualize the treatment in our sense of that term. Moreover, in this early period no account is taken of what came to be known in Neo-Classical theory as "extenuating circumstances."² Furthermore, before the influence of Christianity was felt in the development of the theory of punishment, there was probably no question of responsibility based upon the freedom

¹ Aristotle, *Nicomachean Ethics*, ed. by Mitchell (London and New York, n.d.), pp. 137-138.

² Saleilles, *The Individualization of Punishment* (Boston, 1913), p. 31.

of the will; the social purposes of expiation, deterrence and social protection provided the theoretical justification.³

The Judæo-Christian Theory of Punishment. How did the theory of reformation originate? It grew out of a religious root.

While we must suppose that the expiation theory continued in force among the Jews down at least to the Christian era, we have evidence that in the eighth century B.C. certain new elements were entering into the theory of punishment for sin. For example, Amos, while retaining the retaliatory and expiatory theory of the purpose of punishment, seemingly emphasized its ethical and social basis for recreant Israel. The sins for which Israel is to be punished are, not unfaithfulness in the matter of sacrifices and religious ceremony, but greed, selfishness, injustice to one another, and disregard of the bonds of fellowship. His God is a God of *social* righteousness, punishing those guilty of *social* injustice. Apparently Amos' theory of the purposes of punishment was based upon his conception of the relation of social injustice to the safety of the group. He had so little hope of the willingness of the people of his time to practice social justice between the classes in Israel that he thought the only possible outcome was the destruction of the whole society. Amos saw no prospect of pardon, only destruction: ⁴

Thus saith the Lord, behold I am setting a plumbline in the midst of my people Israel; I will not again pardon them any more; and the high places of Israel shall be desolate and the sanctuaries of Israel shall be laid waste; and I will rise against the house of Jeroboam with the sword.

The younger contemporary of Amos, however, introduces a new note. Finding in his own experience with his unfaithful wife a revelation of the will of God against unfaithful Israel, Hosea conceived of the wrath of God against Israel not only in terms of moral indignation, as did Amos, but found in his own love for his faithless spouse, in spite of her sins, the suggestion that God so loved Israel that He could not utterly destroy her, as Amos believed. He would punish her and through punishment purify her and redeem her unto Himself. *Here the redemptive purpose of punishment appears for the first time in ancient Israel.*⁵ The theory of the purpose of punishment thus introduced into human thought found a confirmation in the experience of Israel during the awful period of exile in Babylonia following the destruction of the Southern Kingdom in 586 B.C.⁶ This theory of the purpose of punishment was taken over by

³ *Ibid.*, p. 35.

⁴ Amos, 7:7-9.

⁵ Hosea, 1:2-8; 11:8 ff.

⁶ Romans, 8:28-30; 11:1-5. While the religious thinkers did not go to the length of saying that through punishment every individual in the nation would be saved, or that the nation would be redeemed by the sufferings entailed upon it for its sin, they did hold firmly the belief that for a *remnant* of the nation punishment would effect reformation and for selected individuals punishment would secure repentance and salvation. Thus we have the doctrine of "a saving remnant," introduced long before his time by

Jesus and at his hands received a fresh emphasis. In spite of the fact that historic Christianity carried over from Judaism and paganism the theory of expiation, the stress Christianity laid upon the forgiving love of God toward sinners and upon forgiveness of fellow-men meant that in the Christian church punishment for sin was redemptive in purpose. What else does the sacrament of penance mean? How otherwise explain the confessional, the threat of excommunication, and the original (not the Spanish) inquisition? The purpose of all these devices of the church was to reform men.

Relation of the Christian Doctrine of Penance to Penology. The story of the amalgamation of secular and ecclesiastical speculation on the purposes of punishment cannot be traced in detail. It will serve our purpose to notice the fusion of the Christian doctrine of *punishment for sin* with the secular theory of *punishment for crime*. While both originate in a combination of man's natural reaction to injury with the theories resulting from reflection upon his experiences, in their respective histories each had been influenced by certain quite different factors. The Christian doctrine of punishment for sin in its early history had had to face the difficult problem of legal administration in a civil state. Moreover, some of its sanctions were supernatural rather than civil. It could leave at least a part of the punishment of the sinner to God either here or in the hereafter. And, again, its doctrine of sin was accompanied, thanks to its great religious authors, by a most humanitarian doctrine of redemption. The last gave a new quality to its theory of punishment. On the other hand, the secular theory of punishment for crime had only social sanctions to be applied here and now; in the interest of social order punishment could not be postponed to the hereafter. Until it came under the influence of Christian teachings the secular theory, derived from primitive usage and thought, was untempered by any such revolutionary conception as that of reformation.

Individual Responsibility, Redemption, and Reformation of the Offender. In Classical penology there is another theory, that of the individual's responsibility for his acts. This doctrine rests upon the theory of man's free will. Whether or not the theory of individual responsibility existed in Greek and Roman society, it certainly received fresh emphasis in Christianity. Like the doctrine of reformation Christianity derived the doctrine of individual responsibility from Judaism. Jeremiah was the first among Israelitish thinkers to declare it. Christian theologians emphasized it. Even Augustine, who taught that the individual's will is not free until he has experienced the grace of God, held firmly to the doctrine of the responsibility of the individual.

the second Isaiah, fitted to the theory of individual responsibility by St. Paul. By this theory he explained to his own mind the refusal of the Jewish people as a whole to accept Christianity and yet was able to hold to the theory of individual responsibility in spite of his doctrine of election.

A third concept common to theology and to secular penology was that of intent. The carrying over of these theories into penology created difficulty when the reformatory theory came to be applied. While the church retained its power for purposes of ecclesiastical control to punish sins here and now when the purpose was made clear either by confession or by circumstantial evidence, it never undertook to relieve the Almighty of His responsibility for punishment in the hereafter. But after the theologians developed the doctrine of free will and responsibility with reference to sin, it was natural that in the disturbed period when the church took over many of the duties of the demoralized Empire the concepts of free will, responsibility, and intent should receive fresh emphasis in the theory of punishment for crime.

Thus the coalescence of Christian theology and secular penology in the course of twelve centuries resulted in the theory of punishment that lasted unchallenged until the rise of the Italian school. Beccaria found no objection to the theories, but only to their application.

There are two more questions to be answered before we discuss the Classical school of penology: How did the doctrine of the reformatory purpose of punishment, and the individualization of punishment, get established in secular penology?

Rise of the Canonical Courts. From the beginning the Christians held that they were a society distinct and separate from the state. In the Scriptures of the New Testament the church fathers found warrant for the church's trying a certain type of case and for settling difficulties among its members.⁷ One of the early Christian writings, coming from the first part of the second century, the *Didache*, forbids communion to any one who has an unadjusted difficulty with a fellow Christian.⁸ As early as the fourth century, as shown by the so-called "*Apostolic Constitutions*," the church had a very carefully arranged system of trial and punishment for Christians.⁹ In this interesting document the groundwork of canonical courts is already well laid. The church is to try its own people in case of dispute with brethren:

Nay, indeed, you are not to permit that the rulers of this world should pass sentence against your people. . . . Let not the heathen therefore know of your differences among one another, nor do you receive unbelievers as witnesses against yourselves, nor be judged by them. . . . Let also the deacons and presbyters be present at your judicatures, to judge without acceptance of persons, as men of God, with righteousness. When, therefore, both the parties are come, according as the law says, those that have the controversy shall stand severally in the middle of the court; and when you have heard them, give your votes holily, endeavoring to make them both friends before the sentence of the bishop, that judgment against the offender may not go abroad into the world.

⁷ I Corinthians, 6:1-3.

⁸ *Didache*, 14:2; 15:3.

⁹ "*Apostolic Constitutions*," II:44-51, in *Ante-Nicene Fathers* (New York, 1899), Vol. VIII, pp. 416-419.

Moreover, the provision is made that the presbyters and deacons shall act as investigating officials to get all the facts possible before the trial so as to assist the judge to arrive at a fair judgment, much in the fashion of modern probation officers. In this procedure there was a rather interesting provision for the individualization of the punishment.¹⁰

In this instance, as is the case today in Japanese communities on the Pacific Coast of the United States, we behold the action of a group within a larger society protecting its mores and institutions against invasion by those of the larger and dominant group. The Christians in ancient Roman society and the Japanese in the United States handled their own delinquents in order to protect their reputation and to preserve their group solidarity.

As the Church gradually won recognition by the Roman state, she yielded to the latter the right to try those of her numbers who were not guilty of ecclesiastical offenses, but held until modern times the right to try her clergy. Also she gradually won from the state the recognition of the duty of the latter to carry out the capital punishment of heretics, thus obviating the necessity of staining her hands with human blood. For in spite of the horrible, bloody deeds of the Spanish Inquisition under Torquemada, the historic attitude of the Church was that punishment was for the purpose of reforming the offender.

The ecclesiastics early began to interfere with the secular courts in cases where the latter had condemned a man to death.¹¹ Augustine of Hippo in 412, nearly a hundred years after the conversion of the Emperor Constantine, face to face with the threatened execution of certain Donatists who had murdered members of his own party, pleaded for their lives. In writing to Marcellinus, the official who had charge of the trial and punishment of these criminals, after saying that he had heard that they had confessed their deeds, Augustine remarks,¹²

This news has plunged me into the deepest anxiety, lest perchance your Excellency should judge them worthy, according to the laws, of punishment not less severe than suffering in their own persons the same injuries as they have inflicted on others. Wherefore I write this letter to implore you by your faith in Christ, and by the mercy of Christ the Lord himself, by no means to do this or permit it to be done. . . . Not, of course, that we object to the removal from these wicked men of the liberty to perpetrate further crimes; but our desire is rather that justice be satisfied without the taking of their lives or the maiming of their bodies in any part, and that, by such coercive measures as may be in accordance with the laws, they may be turned from their insane frenzy to the quietness of men of sound judgment, or compelled to give up their mischievous violence and betake themselves to some useful labour. This is, indeed, called a penal sentence; but who does not see that when a restraint is put upon the

¹⁰ See *ibid.*, II:48.

¹¹ Ambrose, *De Officiis*, II:29.

¹² See "Epistles," 133, 139, *Nicene and Post-Nicene Fathers*, First Series (New York, 1902), Vol. I, pp. 470, 489.

boldness of savage violence, and the remedies fitted to produce repentance are not withdrawn, this discipline should be called a benefit rather than a vindictive punishment?

Unfortunately at certain times in its history the Church did not adhere to this clearly Christian theory and attitude of Augustine. Yet, on the whole the tradition of the reformatory purpose of punishment held.

Gradually the canonical courts took over jurisdiction, not only of such matters as were essentially ecclesiastical in their nature, for instance, faith and church discipline, but also marriage, sex crimes, inheritance, and usury. The church also came to claim the administration of oaths. Thus, as the civil organization of Rome weakened, the church took over increasingly her functions in the trial and punishment of criminals, especially offenders against those laws and customs that had a moral or ecclesiastical bearing. In this way there grew up, alongside the secular courts, the canonical courts, with a spirit and a procedure informed with the genius of Christianity. Through the ecclesiastical courts the doctrines of free will and individual responsibility for crime received new emphasis, and the theory of reformation of the criminal was introduced into penal law in the Middle Ages.¹³

The Individualization of Punishment. Through the canonical courts the theory of the individualization of punishment by the judge also received fresh emphasis. The lawmakers and the judges had the practical task of making and administering law not only in the light of such theories of free will and responsibility as were regnant in society at any given time, but also face to face with the indignation of the community at a particular offense. While it was believed that the punishment of an offense should be imposed according to whether the offender committed the crime of his own free will and accord, in actual practice this had to be determined on the basis of the circumstances under which the crime was committed. The judges had no other criteria than such circumstances by which to judge of free volition and responsibility.

The Abuse of Judicial Individualization. Also, remember that before the rise of Classical penology the law, while it did attempt to determine the comparative seriousness of such crimes as murder and theft, left to the judges the infliction of "discretionary penalties," in order that the judge might do what the law could not do, namely, differentiate between the heinousness of acts in the eyes of the community, as determined by the objective circumstances of the case. For example, while the law in general considered murder more serious than theft, yet in a given case the judge might consider the robbery of a widow as deserving more severe punishment than an accidental homicide. Hence *the judge had the power to add to the punishment prescribed by law additional penal-*

¹³ Saleilles, *The Individualization of Punishment* (Boston, 1913), pp. 34-39. See also Hazelstine, "Canon Law," in *Encyclopedia of the Social Sciences* (New York, 1930), Vol. III.

ties in view of the circumstances. This practice put into his hands the power to punish tyrannically. The judges could make their position serve their own grudges or the violence of one class against a member of another class. In actual practice this theory gave them such tyrannical power and led to such abuses that the Classical school arose in protest.¹⁴ The class structure of society at that time together with all its accompanying ideology provided a firm basis for such class discrimination in the administration of the criminal law.

THE CLASSICAL SCHOOL OF PENOLOGY

The Classical school was the *direct outgrowth of two influences*: (1) protest against the abuses of the discriminatory power of the judges, which had been devised to assist in applying the criteria of responsibility provided by the combination of secular and ecclesiastical theory; (2) the influence of the philosophical school of Rousseau and his social contract theory. Its most outstanding representatives were Beccaria in Italy, Bentham in England, and Feuerbach in Germany. In other words, it was an outgrowth of the general intellectual and social development of the eighteenth century in much the same way as were the political theories that gave rise to the French and American revolutions.

The purpose of the Classical penologists was to limit the arbitrary power of the judges and to mitigate the harsh and extreme punishments that had grown out of medieval theory and practice. Under that theory it had been possible for judges to wreak personal vengeance on enemies for the slightest transgression. The law set only a minimum penalty, giving the judge the power to add to the penalties prescribed in order to adapt the punishment to the responsibility of each individual criminal.¹⁵

The rise of the Classical school is most closely associated with the Italian, Beccaria. His book *Crimes and Punishments*, published in 1764, is usually considered the foundation stone of this doctrine of punishment. This is not because Beccaria gave utterance to an altogether new theory, but because he applied the new political philosophy of that day to the subject of crimes and punishments in a searching critique. His book at once attracted wide attention, as is shown by the fact that in a few years it was translated into many languages.¹⁶ Born at Milan, Italy, in 1735, and educated at the Jesuit College at Parma, Beccaria showed great ability in mathematics. He soon came under the influence of the writings of Montesquieu and thereafter became interested in the problems of politics and economics, or what once was known as "national economy." For twenty-five years he was a member of the highest magistracy, during which time he published for the Austrian government a

¹⁴ Saleilles, *op. cit.*, pp. 45-51.

¹⁵ *Ibid.*, pp. 51-58.

¹⁶ *Encyclopædia Britannica*, Ninth Edition, Article "Beccaria"; Palgrave, *Dictionary of Political Economy*, Article "Beccaria."

number of studies on economic and political questions. He was an intimate friend of the Italian economists, the Verris. Two years after the publication of his book, the Austrian government founded for him a chair of political economy in Milan. While his contributions to economics are of interest chiefly to economists, his book on penology is the work with which his name is most widely associated.

In this book Beccaria shows that he had absorbed the political philosophy of the eighteenth century. He starts out with a brief exposition of the social contract theory of Rousseau. It comes out in the opening sentence of his essay. He says, "Laws are the conditions under which men, naturally independent, united themselves in society. Weary of living in a continued state of war, and of enjoying a liberty which became of little value from the uncertainty of its duration, they sacrificed one part of it to enjoy the rest in peace and security."¹⁷ This theory he applied to the problem of crime and its punishment. He says, "If we look into history we shall find that laws, which are, or ought to be, conventions between men in a state of freedom, have been, for the most part, the work of the passions of a few or the consequences of a fortuitous or temporary necessity; not dictated by a cool examiner of human nature, who knew how to collect in one point the actions of a multitude and had this only end in view, the *greatest* happiness of the greatest number."¹⁸

Reading this little book we realize that it is essentially a protest against the abuses that had arisen in a despotic and autocratic society, callous to the sufferings brought about by its laws. His words are motivated by a passion for human equality and liberty. Speaking of the diffusion of the knowledge of philosophic truths by which the relations between sovereigns and their subjects are discovered, he says:¹⁹

By this knowledge commerce is animated, and there has sprung up a spirit of emulation and industry, worthy of national beings. These are the produce of this enlightened age; but the cruelty of punishments, and the irregularity of proceeding in criminal cases, so principal a part of the legislation and so much neglected throughout Europe, have hardly ever been called in question. Errors accumulated through many centuries have never yet been exposed by ascending to general principles; nor has the force of acknowledged truths been ever opposed to the unbounded licentiousness of ill-directed power, which has continually produced so many authorized examples of the most unfeeling barbarity. Surely, the groans of the weak, sacrificed to the cruel ignorance and indolence of the powerful, the barbarous torments lavished, and multiplied with useless severity, for crimes either not proved, or in their nature impossible, the filth and horrors of a prison, increased by the most cruel tormentor of the miserable, uncertainty, ought to have aroused the attention of those whose business is to direct the opinions of mankind.

Acknowledging his debt to Montesquieu for the inspiration of his work, he confesses that he has developed the subject that his master only

¹⁷ Beccaria, *Crimes and Punishment* (New York, 1809), p. 15.

¹⁸ *Ibid.*, Preface.

¹⁹ *Ibid.*, p. 13.

touched. However, he distinctly says that he shares the same reaction to injustice that animated Montesquieu when he writes, "I shall be happy if, with him, I can obtain the secret thanks of the obscure and peaceful disciples of reason and philosophy and excite that tender emotion in which sensible minds sympathize with him who pleads the cause of humanity."²⁰ Only as such a protest, and not as the program of a contemplated new school of punishment, can Beccaria's book be understood. That it did turn human thought on the subject of punishment for crime into new channels was an event that perhaps would have surprised the author himself more than it does the reader. This book was the inspiration of what came to be called the Classical school of penology. Four years before Beccaria died, his ideas had been worked out in great detail by legislators and enacted in the French Code of 1791.

In detail his protest was against (1) the arbitrary penalties of judges, added by them to statutory punishments in their endeavors to interpret the spirit of the law; (2) the obscurity and hence the uncertainty of the law; (3) the current methods of admitting the testimony of witnesses whose credibility was open to suspicion, and the kind of evidence admitted; (4) secret accusations; (5) torture; (6) the administration of oaths to the accused in the endeavor to make him incriminate himself; (7) the length of confinement often visited upon the accused before trial and punishment; (8) the abuse of power by the rich against the poor and humble in the punishment of crime; (9) the severity and cruelty in the punishment of crimes against property, such as robbery; (10) the too frequent punishment of infamy for trifling crimes; (11) the too frequent use of banishment and confiscation of estate with the consequent suffering of an innocent family; (12) capital punishment; (13) the perversion of justice in the interest of the friends of the judges and to the detriment of those who had no friends at court; (14) the severe punishment of crimes difficult of proof, such as suicide, adultery, sodomy, smuggling, and bankruptcy, or punishment that did not serve the purpose of punishment; and (15) the abuse of the pardoning power. In all these cases his protest was inspired by the desire to make all men equal before the law.

On the constructive side Beccaria made a number of suggestions that represented a real *reformation of the machinery of justice* in accordance with his political opinions already referred to. Thus, he urged that (1) legislators, not judges, should make the laws; (2) the duty of judges is solely to determine whether a crime as defined by the legislators has been committed and to pronounce the sentence determined by the law; (3) the laws should be clear, providing a scale of crimes from the most dangerous to society to the least serious, so that each man will know just what punishment to expect if he commits a certain act; (4) the same punishment should be visited upon every man who commits a given act, no

²⁰ *Ibid.*, p. 13.

matter what his status in society; (5) the purpose of punishment is to make sure that the guilty do not repeat the crime and that others are deterred by the punishment of the guilty from committing crime; (6) this purpose is secured by the certainty and promptitude rather than by the severity of the punishment; (7) the state should address itself to devising means for the prevention of crime, by (a) making the laws clear and simple, (b) getting "the entire force of the nation united in their defense," (c) having "them intended rather to favour every individual than any particular class of men," and (d) by having "the laws feared, and the laws only"; and (8) the punishment should be public. He sums up his conclusion as follows: "That a punishment may not be an act of violence, of one, or many, against a private member of society, it should be public, immediate and necessary, the least possible in the case given, proportioned to the crime, and determined by the laws."²¹

In much of what he says there is value for our day. The strange thing is that only a part of his ideas were adopted by the so-called Classical penology. Take the French code of 1791 as an example of the Classical penology. It attempted to apply Beccaria's principle of "equal punishment for the same crime." It adopted his suggestions that crimes should be arranged in a scale, that to each crime the law should affix a penalty, and that the legislators should make the law, while the judges should only apply it to the cases that came before them for trial. On the other hand, it failed to adopt methods whereby the injustice inherent in the application of "equal punishment for the same crime" should be prevented. While in that dictum Beccaria had in mind the abuse of arbitrary punishments by the judges and the favoritism shown the powerful by the courts, in actual practice in the French courts it was extended to accused persons who were unequal in another sense—the insane and the sane, the minor and the adult, the idiot and the person of normal intellect. In this code there was an attempt not only to legislate on every crime, but to fix by statute the penalty for each degree of each kind. Nothing was left to the judgment of the court, except the question of guilt. There could be no abatement for extenuating circumstances, no added penalty for the heinousness of the way in which a particular crime was committed. The punishments were as absolutely fixed as they had been in the Salic Law more than a thousand years before, although they were not quite on the same basis.

In short, the Classical penology was a curious combination of the ideas of Beccaria with the fundamental medieval philosophy. It assumed with the current philosophy, which was not attacked by Beccaria, that (1) man is a free moral agent, and that every act of any man is of his own free will and accord; and that (2) every man is therefore responsible for his acts. It differed from Beccaria in that it retained from the former penology the theory that (3) crime can be expiated only by punishment. It

²¹ *Ibid.*, pp. 127, 136.

adopted the principle of Beccaria that (4) the law, not the judge, should determine the punishment to be attached to a certain act and provided a scale of punishments to be applied equally to all persons committing the same crime.

It differed from the preceding theory in that it destroyed the arbitrary power of the judges to add to the punishments prescribed by the law additional punishments for extreme cases. The whole function of the judge was to determine whether the man was guilty of a certain crime and to pronounce the sentence provided in the law for that particular crime. That made necessary a very extensive code, since the law must provide not only for every crime which man might commit, but for all the varying degrees of that single offense. It should be noticed, however, that it did not provide for extenuating circumstances as did the later Neo-Classical theory.

The Classical theory had *certain advantages and difficulties*. Among the advantages were:

1. It was easy to administer; the judge was only the instrument to apply the law.
2. It eliminated arbitrary sentences such as had been possible under the pre-Classical theory and procedure.

Among the difficulties were:

1. It was unfair in that it treated all men as mere digits without reference to the differences in their individual natures or the circumstances under which they committed the crime.
2. It introduced the rankest injustices, since it subjected to the same punishment—often resulting in their intermingling during punishment—the first offender and the hardened criminal, the accidental and the habitual criminal.
3. In actual practice its theory of equal punishment for the same crime was a farce, because it provided the same punishment for a given crime no matter whether committed by a repeater or a first offender, by one to whom imprisonment was a crucifixion or another to whom it was a refuge.
4. As Liszt has said, it was the *magna charta* of the professional criminal, because he knew exactly what risks he had to run and could determine with cool calculation beforehand whether the risk was worth while.
5. It considered only the injury inflicted by the criminal, not the state of mind and the nature of the criminal.
6. It proceeded upon abstractions and ideals, while in practice penal law must deal with concrete realities. As Saleilles says: "The theory is noticeably false, inhuman, and supremely unjust but obviously simple and easy to apply."²²

As a matter of history the Classicists themselves found that the attempt to administer the French code of 1791 was an impossible task; hence the rise of the Neo-Classical school.

THE NEO-CLASSICAL SCHOOL

In the revised French code of 1819, while the essential principles of the Classical school remained intact, the system of defined and invariable

²² Saleilles, *op. cit.*, p. 60.

punishments was modified. The judge was given discretion in the case of certain crimes to vary the punishments between the maximum and the minimum fixed by the law. But the judge under that code could not admit extenuating circumstances, whether subjective (idiocy, insanity, and the like) or objective circumstantial details of the crime. The Classical theory remained untouched in its fundamental theory—every person equally free and therefore equally responsible. But it did recede from the position of Beccaria in giving the judge some discretion. That marked a break that in time led to all kinds of refinements in the application of the theory of responsibility. The struggle from that date to the present has been in most countries of the Western world to individualize the punishment by setting up varying degrees of responsibility. That struggle with all its numerous devices to assess the exact degree of responsibility in each case—devices including age, mental condition, and extenuating circumstances—gave rise to what has come to be known as the Neo-Classical school of penology, represented among others by Rossi, Garraud, and Joly. Like the Classical school it is based upon the theory of responsibility, and responsibility rests upon the theory of freedom.²³ But the Neo-Classical school could not escape all the difficulties inherent in a system of punishment based upon the theory of free will and responsibility, even though it provided for the recognition of partial, or as in the case of children and idiots of no, responsibility. The difficulty remains of determining in some cases the degree of responsibility. But the new school did provide for some mitigation of the injustices inherent in the Classical school by the theory of partial responsibility. Some who commit crime claim our sympathy, and some excite our hostility.

Also scientists, philosophers, physicians, and jurists who became acquainted with the findings of biology concerning heredity, of pathology, and of psychiatry are not interested in the theory of responsibility. So the new school *recognizes extenuating circumstances in the criminal himself*, which must be taken into account in punishing him. This school admits that minors are incapable of crime because they have not reached the age of responsibility. Moreover, certain adults are incapable of crime because in their condition they are not free to choose. Those who are insane or imbecile at the moment of committing crime are held to be irresponsible and therefore incapable or only partially capable of committing a crime. However, in the early days of this school, as the theory was actually worked out in the criminal codes, and as it still remains in the practice of most of our criminal courts, it must be shown by the defense that at the moment of committing the act this person was incapable of choosing and therefore irresponsible. Insanity antecedent to the act is no proof to the jury that he was insane at the time he committed the crime.

This position made room for the medical expert, but the theories of

²³ Saleilles, *op. cit.*, pp. 56-61.

free will and responsibility made it next to impossible for the medical man to give merely his expert opinion. In actual practice it led to the introduction in the courts of this country of the *hypothetical question*. This question recites the facts brought out in the testimony concerning the past of the person that may show that he was insane or an imbecile before the act was committed but puts to the medical or psychiatric expert the question as to whether he believes that, in view of all these facts, the person on trial, at the time he committed the act, was capable of choosing between right and wrong and therefore responsible. In actual practice it makes the expert answer a metaphysical question rather than a scientific one. The expert may or may not believe in free will, but he is asked a question based upon the assumption of free will. He may believe that the man is suffering from a form of mental derangement in spite of which he is capable of reasoning, but that nevertheless incites him to deeds that he believes are right. Such an opinion, however, may not be offered to the court. The only thing on which he is allowed to give his opinion to the jury is the question of responsibility.²⁴

According to the Neo-Classical school, therefore, the basis for the mitigation of punishment is the establishment of irresponsibility or partial responsibility by reason of insanity, imbecility, or any other condition in the individual that made it impossible for him to exercise free will. Everywhere the adherents of this theory cling to the idea that punishment must rest upon the degree of responsibility of the one who commits a criminal act. In some states the condition of mind that makes it impossible for the individual to choose between right and wrong is admitted in evidence, and also some such permanent conditions that prevent free will, as degeneracy, neurasthenia, and so on, may be admitted. In addition, this school allows the admission of evidence of external circumstances connected with the act on which mitigation of punishment may be based. The Neo-Classical theory is to-day accepted practically everywhere.

Liberal interpretation, the Neo-Classical doctrines approach a naturalistic view of human behavior. Logical investigation of the precepts of this school leads one into the pale of the naturalistic interpretation of personality development.

What are the results of the Neo-Classical theory in actual practice?

1. It exempts from punishment, when it is established that freedom of the will is absent or is interfered with by conditions in the criminal that made it impossible for him to exercise free will.
2. Punishment may be correspondingly reduced when there is only partial freedom of the will and therefore only partial responsibility.

²⁴For an illustration of a hypothetical question that reveals the impossibility of arriving at approximate justice under the theory of freedom of the will and responsibility held by the Neo-Classical school, see Goddard, *The Criminal Imbecile* (New York, 1915), p. 109.

3. It admits that punishment should be mitigated if the circumstances of the act showed lack of full responsibility.

4. It represents a reaction against the severity of the Classical theory of equal punishment for the same act regardless of the subjective condition of the criminal.

5. Being based upon the theory of freedom of the will and responsibility, it introduces an impossible basis for the action of judges, juries, and experts.

6. It does attempt to introduce consideration of the conditions under which the individual committed an act and thus permits to a degree the adaptation of the punishment to the criminal. In so doing the theory introduces the subjective attitude hitherto found only in the ecclesiastical courts.

7. As a makeshift it introduces the question of premeditation as a measure of freedom of the will.

8. Since culpability rests, according to this theory, on freedom of the will, the first offender, who hesitates and can choose, deserves the heavier punishment, whereas the hardened offender, less likely to hesitate by reason of his habits, should escape with less punishment. This outcome, of course, is absurd.

9. In actual practice it has been found that, with judge and juries, not the question of responsibility based upon freedom of the will but the supposed menace of the act to society is taken into consideration. According to this view criminals are irresponsible but nevertheless must be punished because they are dangerous to society. Out of this view arises the theory of social responsibility for crime. Whether irresponsible or responsible, the criminal is a menace to society and therefore should be punished. But since social conditions produce the criminal attitude, should he therefore be acquitted? "No," says Saleilles, "for society must be protected." Thus with the theory of limited responsibility the Neo-Classical school is involved in difficulties. One difficulty is that in practice it finds it hard to apply its principles to specific situations. Another is that it is based upon a scientific error. Responsibility is a conception of social origin, but the Neo-Classical theory converts it into an abstract and metaphysical notion without any corresponding reality. What we must have is a conception of responsibility as it is currently accepted by the average man, since it is the jury which acquits or convicts. Every application of the theory of responsibility which runs counter to common opinion is a scientific mistake. Juries will not act consistently on any abstract theory but in view of the circumstances in each case. They will not often take into account mental defect but will treat the man as one of like feelings and motives with themselves. Because of these difficulties involved in the theory of freedom held by the Neo-Classical school arise the inconsistent decisions of juries. This theory makes impossible a uniform standard of judgment as to the punishment in a particular case.

Sociological Relevancy. An excellent illustration of the sociological relevancy of abstract principles is found in the history of criminological theories and practices. The system of courts that existed prior to the application of the Classical school tenets was not, in and of itself, undesirable. The freedom of the court to decide upon the form of treatment (usually punishment in that era) is not unlike the latitude advocated for judges to-day by careful students of criminal behavior. However, the medieval judges were part of a social complex, many variables of which are not included in the cultural complex in which to-day's scholars urge greater individualization of treatment and therefore greater freedom on the part of those before whom offenders are brought. The

former were prone to focus their attention on the offense and the offender to the exclusion of other pertinent items, and their decisions were in keeping with this emphasis, coupled as it was with the doctrine of uncircumscribed volition.²⁵

Viewing behavior from the vantage point of a naturalistic interpretation (that is, that there is no uncaused behavior, and that conduct can be explained in terms of the many interactive factors, without recourse to free will explanations) it is now felt that the crime is only one of many factors in the situation, and that careful investigation and intelligent disposition of the case demands that the authorities be given free rein to deal with the case as they see fit. Legislation that considers only the offense by itself can serve only to thwart a correct solution.

Prerequisites to the success of this system are the judge's absolute honesty, his desire to arrive at a decision congruent with the welfare of the individual and society, and, especially, his possession of the best knowledge of human nature that contemporary science can afford him. Judges thus equipped are indeed rare. Also, as indicated above, the currency of certain myths and prejudices must be weighed prior to the attempt to install such a system. Between the advocacy of such a plan and the realization of it lies the long and arduous task of educating the influential populace sufficiently to assure its acceptance. We are not so naïve as to believe that a rational system of dealing with abnormal behavior can succeed regardless of encompassing antipathies. With the need of expert knowledge in the disposition of cases, the incongruity of the jury is manifest.

Thus it is clear how the changing of certain factors in an interactive complex determines the desirability or undesirability of other factors within that complex. It is well for the student to bear this truth in mind, both with regard to the material presented in this text and to social phenomena in other than the academic sphere.

QUESTIONS AND EXERCISES

1. Name the chief purposes of punishment.
2. State Aristotle's theory of corrective justice. To which purpose of punishment is it related?
3. What influence did Judaism have on the theory of individual responsibility?
4. Explain how penology got its theory of reformation.
5. What was the theory of "discretionary punishments" characteristic of pre-Classical penology? What evils grew out of it?

²⁵ The experience of France with the penal code of 1791 indicated that the weaknesses of the former system lay elsewhere besides in the unrestricted authority of the judges. The multiplicity of variables that were operative in the situations confronting the court made it necessary to permit the judge to retain discretionary power. Legislation proved to be too inflexible to be just. There remained, however, the skeleton of the "let the punishment fit the crime" theme, admitting extenuating circumstances and degrees of responsibility. The fear of the court's unlimited dictation still obtained, both the moral character and judgment being questioned.

6. What were the main points in the Classical theory of punishment as set forth by Beccaria?
7. What changes were introduced in theory by the Neo-Classicists?
8. What is meant by *hypothetical question*? See Goddard, *The Criminal Imbecile* (New York, 1915), Appendix A.
9. Why is the hypothetical question necessary under the Neo-Classical system?
10. What is the function of the alienist "expert" in a criminal trial under the Neo-Classical system?

Chapter XIV

CRIMINOLOGICAL AND PENOLOGICAL THEORIES (*Continued*)

THE ITALIAN SCHOOL

Lombroso. A little more than a hundred years after the appearance of Beccaria's *Crimes and Punishments* a small pamphlet entitled *The Criminal in Relation to Anthropology, Jurisprudence, and Psychiatry* was published by Lombroso, another Italian. Out of this pamphlet and subsequent publications by Lombroso and a number of other Italians there developed a school of criminology and penology attacking the positions of the Classical and Neo-Classical schools much as Beccaria had attacked the practices and theories of penology in his day. Born in 1836, of a Jewish family, Lombroso was educated for medicine. He finally specialized in psychiatry and became attached to an institution for the insane, where he made clinical examinations of those who died in the institution. Previous to that as an army doctor he had used his leisure time by making a series of studies of the Italian soldier. In these examinations he states that he was struck by the fact that the vicious soldier was distinguished from the honest soldier by the extent to which the former was tattooed and by the indecency of the designs. In 1866 he had begun the study of psychiatry and to the disgust of his colleagues sought to base the study on experimental methods. He felt that in studying the insane, the patient, not the disease, should be the object of attention. In studying the insane he applied his clinical method of studying the skull with measurements and weights, and the living insane person by means of instruments to test the degree of sensitiveness to touch. Following this he endeavored to apply the same method to the study of criminals. Evidently he had been influenced in this attempt by such British students as Thompson and Wilson, and by Broca, the French anthropologist, and other European scholars.¹ However, being skeptical as to the existence of "moral

¹ Ellis, in his *The Criminal* (London and New York, 1890; Third Edition, 1907), gave a brief history of the precursors of Lombroso. This book, which had a wide sale in America as well as in Europe, made it clear that Lombroso, inspired by the evolutionary theories of Charles Darwin, who shortly before had published his *Origin of Species*, was only following out on new lines, theories suggested by European scholars long before. In his Chapter 2 Ellis mentions no less than twenty-two scholars in Europe who had anticipated Lombroso in pointing out the relationship between the criminal's physical and mental characteristics and his behavior.

lunatics" as described by both the French and English authors, he was desirous of applying the experimental method to a study of the differences between lunatics, criminals, and normal individuals. He found this method useless for determining the difference between criminals and lunatics, but the attempt suggested to him a new method for the study of penal jurisprudence, a matter to which he had never given serious thought. He began dimly to perceive that the abstract judicial methods of studying crime hitherto pursued by jurists, especially in Italy, were barren of results and should be superseded by a direct study of the criminal in comparison with insane and normal individuals. So he began to study criminals in the Italian prisons. He made the acquaintance of the famous brigand Vilella. He found him to be a man of extraordinary agility who had been known to climb steep mountain heights with a sheep upon his shoulders. He discovered also in the brigand a cynical effrontery, which led him to boast openly of his crimes. On the death of this brigand, Lombroso was designated to make the postmortem examination. On opening the skull he found, on the interior of the lower back part at a spot where usually a spine protrudes upward in the normal skull, a distinct depression, which he named the *median occipital fossa*, a characteristic that Lombroso's studies in comparative anatomy had shown him was to be found in inferior animals, especially rodents. He also found this depression correlated as in these animals with an overdevelopment of the *vermis* known in birds as the middle cerebellum. In his own words: ²

This was not merely an idea, but a revelation. At the sight of that skull I seemed to see all of a sudden lighted up as a vast plain under a flaming sky, the problem of the nature of the criminal—an atavistic being who reproduces in his person the ferocious instincts of primitive humanity and the inferior animals. Thus were explained anatomically the enormous jaws, high cheek-bones, prominent superciliary arches, solitary lines in the palms, extreme size of the orbits, handle-shaped or sessile ears found in criminals, savages and apes, insensibility to pain, extremely acute sight, tattooing, excessive idleness, love of orgies, and the irresistible craving for evil for its own sake, the desire not only to extinguish life in the victim, but to mutilate the corpse, tear its flesh, and drink its blood.

I was further encouraged in this bold hypothesis by the results of my studies on Verzeni, a criminal convicted of sadism and rape, who showed the cannibalistic instincts of primitive anthropophagists and the ferocity of beasts of prey.

The various parts of the extremely complex problem of criminality were, however, not all solved thereby. The final key was given by another case, that of Misdea, a young soldier of about 21, unintelligent but not vicious, although subject to epileptic fits. He had served for some years in the army when suddenly, for some trivial cause, he attacked and killed eight of his superior officers and comrades. His horrible work accomplished, he fell into a deep slumber which lasted twelve hours and on awaking appeared to have no recollection of what had happened. Misdea, while representing the most ferocious type of animal, manifested in addition all the phenomena of epilepsy which appeared

² Ferrero, *Lombroso's Criminal Man* (New York, 1911), Introduction by Lombroso, pp. xii-xvi. (Copyright by G. P. Putnam's Sons, New York, 1911.)

to be hereditary in all the members of his family. It flashed across my mind that many criminal characteristics not attributable to atavism, such as facial asymmetry, cerebral sclerosis, impulsiveness, instantaneousness, the periodicity of criminal acts, the desire of evil for evil's sake, were morbid characteristics common to epilepsy, mingled with others due to atavism.

He later confessed that his attempts would have been sterile had not a large number of Russian, American, German, Hungarian, and Italian jurists corrected hasty and one-sided conclusions, suggested reforms and applications, and attempted to apply his ideas to the treatment of the offender.

By reason of his incessant publication of his theories stated in extravagant form and his constant speaking before congresses concerned with the criminal, Lombroso soon attracted wide attention. There were many who criticized his theories and his methods. Others in his own and other countries came to his support and contributed other elements to the theories of the school.³

Lombroso was the child of his age and found in the thought of his day many of the ideas that were fruitful to him in his studies. English evolutionary philosophy and science were familiar to him. Psychiatry, begun in Germany and France, had commanded considerable attention. Since the days of Beccaria the discussion of crime and its treatment had been carried on with vigor on the basis of the Classical tradition.⁴

As the result of suggestions by others Lombroso's later thought included not only the anthropological and the psychiatric explanations of criminality but also the geologic, meteorological, economic, and social. Hence in his last book, which presents his riper thought upon the problem, while he still insists on the born criminal and the insane, he introduces also a third type called the *criminaloid*, whose criminality, while excited by external circumstances, is due nevertheless to innate traits which gain the upper hand under such circumstances. So according to Lombroso there are *three great classes of criminals: born criminals*, explained on the basis of atavism, that is, reversion to a lower type of evolutionary development, who form, according to Lombroso, about one-third of the total mass of offenders; second, *insane criminals*, including the idiot, the imbecile, victims of melancholia, and sufferers from general paralysis, dementia, pellagra, alcoholism, epilepsy, and hysteria; third, *criminaloids*, who are not born with physical stigmata and do not suffer from mental aberrations but who are of such a mental make-up

³ It is not without interest that two of the leading schools of criminology have originated in Italy. A line of writers on the punishment of crime represented by such men as Farinaccio, Claro, and Marsilio had written on the problem as far back as the great Classical juriconsults. See De Quiros, *Modern Theories of Criminality* (Boston, 1912), p. 11.

⁴ For a brief review of the precursors of Lombroso's anthropological and psychiatric theories, see Garofalo, *Criminology* (Boston, 1914), p. 66; also Havelock Ellis, *op. cit.*, Ch. 2.

that under certain circumstances they display antisocial conduct. They are not really criminals, but they act like them. Recognizing that a large proportion of the crimes committed cannot be attributed to lunatics, epileptics, or what he calls the morally insane, and that only one-third of them show atavistic and morbid characters, Lombroso said that fully half of the criminals are not born criminals in the sense in which he used that term, nor are they insane or epileptics, but persons suffering from defects by reason of which he calls them criminaloids. The real distinction between the criminaloid and the born criminal, according to Lombroso, is psychological rather than physical.⁵

Lombroso died in 1909. Even before his death *criticism* not only outside of the Italian school, but within it as well, had changed the emphasis in certain respects. Further anthropological studies of both prehistoric man and contemporary primitives have shown that the evolution of the human type has not been along the simple lines followed by Lombroso. Consequently it has become necessary to abandon the theory that the criminal is physically atavistic. Furthermore, more recent studies in clinical psychiatry have shown that in many respects the relationship of crime to epilepsy and insanity as suggested by Lombroso does not hold.⁶

Ferri. A younger member of the Italian or Positive school is Enrico Ferri, born in 1856 in the Province of Mantua. Graduating from the lyceum of his native town in 1874, he entered the University of Bologna, where he came under the influence of Pietro Ellero, at that time professor of criminal law but interested in sociological studies. Here Ferri learned to work in the statistics of crime and developed his life's interest in the criminal. At twenty-one years of age in 1878, in his first publication, "The Theory of Imputability and the Denial of Free Will," he showed the direction his thought was taking. The next year he went to Paris, where he studied and wrote. Out of this period came his studies of criminality in France from 1826 to 1878. This study was recognized by French scholars as a contribution to this field. Returning in 1879, he became a pupil of Lombroso at the University of Turin. This contact with Lombroso proved to be of the very greatest importance. The next year he was appointed professor of criminal law in the University of Bologna. Here his lecture rooms were crowded. Two years later he accepted a call to a chair of criminal law at the University of Siena. In 1884 he published the first edition of his study on *The Homicide*. In this book appears for the first time his classification of criminals. In the same year appeared the first edition of his *Criminal Sociology*. This remarkable productivity shows how rapidly Ferri had developed his thought. Having become a socialist, he was elected a deputy to the Italian Parliament by the socialist party. His political activity, however, did not prevent the

⁵ Ferrero, *op. cit.*, Chs. 1-4.

⁶ Bleuler, *Textbook of Psychiatry*, tr. by Brill (New York, 1924), p. 591.

continuance of his writing on criminality and law. In 1890 he changed universities once more, going to the University of Pisa to take the chair held for a long time by Carrara, the leader of the Classical school of criminal law in Italy. Because of his socialist activities in 1893 he was removed by the University from this chair. In 1896 he founded the socialist paper *Avanti*. Retiring from the teaching profession, he began the private practice of law at Rome, continuing until 1904, when he was made professor of criminal law at the Royal University in Rome.

While Ferri has a large number of books and papers on criminology to his credit, his most important work is his *Criminal Sociology*. In successive editions changes were made in response to new knowledge and to the criticisms that its publication and the writing of the other members of the School excited, but the main outlines of his thought appeared in the first edition in 1884.

While adhering to Lombroso's anthropological theories of the genesis of crime, Ferri contributed an *emphasis upon the social factors* and gathered together and placed in logical form more clearly than any other member of the School the various *factors that enter into the making of the criminal*. These in Ferri's presentation are three: (1) the physical factors, including the geographic, the climate, temperature, and so on; (2) the anthropological, including the psychological; and (3) the social, including economic and political factors as well as age, sex, education, religion, and so forth.

In addition to his labors in presenting in logical form the results of the Italian school's investigation as to the causation of crime, Ferri contributed a number of generalizations that show the brilliance of his mind. Perhaps the most famous of these is his so-called "*law of criminal saturation*," by which term he described the fluctuation in the statistics of crime as social conditions varied.

On the *penological side* Ferri performed a similar service for the Italian or Positive school. Here he brought together the material on the equivalents of, or substitutes for, punishment and worked out a theory of justice without the Classical basis of free will in the criminal. This theory is the theory of social accountability.⁷ In his outline of penology the *equivalents of punishment*, or what we should call preventive measures, played the largest rôle. Among these equivalents he mentions free trade, abolition of monopolies, suppression of certain taxes which constitute a constant source of agitation, the substitution of gold and silver for bank-notes, thus preventing counterfeiting, cheap workmen's dwellings, preventive and auxiliary institutions for invalids, public savings banks, wider streets and better lighting to render offenses more difficult, birth-control to prevent abortions and infanticides, the improvement of laws on marriage, on the adoption of illegitimate children, on the investiga-

⁷ Ferri, *Criminal Sociology* (Boston, 1917).

tion of paternity, on breach of promise, divorce, etc., which would prevent offenses connected with sex and family, improvement of mercantile laws relating to the responsibility of bank and company directors, bankruptcy, etc., state control of the manufacture of weapons, the establishment of courts of honor against dueling, the prevention of pilgrimages, provision for the marriage of the clergy and the suppression of monasteries, the abolition of many holidays, provision for public recreation, the establishment of foundling homes, public suppression of immoral publications and accounts of famous trials, and the debarring of the young from police courts and assizes.⁸

These suggestions of Ferri, however, did not secure the assent of all members of the Positive school. Garofalo not only objects to details in this program of "penal substitutes" but severely criticizes Ferri's scheme in that, while it proposes that some government control through law be done away with, it contemplates that legislation be extended to other things, with the result that while the number of crimes of smuggling, for example, will be lessened, new crimes against the proposed legislation will occur. Furthermore, it raises the whole question of the function of legislation and government control.⁹

Garofalo. The third of the three great founders of the Italian school is Garofalo. His parents belonged to the nobility but were of Spanish origin. He was born in Naples in 1852. At the conclusion of his university studies in law he became a magistrate, thus entering what was a profession in itself all over Europe, and rapidly attained distinction. He has held a number of important positions in various parts of Italy as a magistrate. He was a senator of the kingdom and professor of criminal law and procedure at the University of Naples. His interest in criminal law reform led to his appointment by the Minister of Justice in 1903 to draft a code for the reformation of Italian criminal procedure, a labor that, however, for political reasons the government was forced to lay aside.

While Garofalo has been active in various associations and learned bodies having to do with sociology and criminology, he has written a number of books upon the subject of crime and criminals, such as *Criminal Attempt by Insufficient Means*; *The True Manner of Trial and Sentence*; *Indemnification of Persons Injured by Crime*; *The Socialist Superstition*, and *International Solidarity in the Repression of Crime*, extending in time from 1882 to 1909. His fame, however, rests upon his *Criminology*. This book grew out of a monograph published in 1880. The first edition appeared in 1885, the second in 1891. He himself prepared a French translation, which went through five editions, the last of which was a radical recasting of the whole work. Translations were made

⁸ *Ibid.*, Part II, Ch. 5, and Part IV. See also De Quiros, *op. cit.*, p. 29.

⁹ Garofalo, *op. cit.*, pp. 189, 190.

into Spanish and Portuguese, and in 1914 an English translation was published in the United States.¹⁰

Garofalo agrees with his colleagues, Lombroso and Ferri, in emphasizing the positive approach to the problem of crime; that is, he thinks that crime can be understood only as it is studied by scientific methods. He stresses the study of the criminal nature and the circumstances in which the criminal lives, which he believes constitute the medium that excites to crime the individual with abnormal traits. With Lombroso and Ferri he agrees in the attempt to suggest certain reforms in the treatment of the criminal in line with their discoveries as to his nature. He is also one with them in his attack upon the position of the Classical school. The criminal is not a free moral agent but is the product of his own traits and his circumstances. Hence the criminal should be treated not in accordance with a metaphysical theory of freedom of the will and consequent responsibility for his acts but upon an understanding of his nature. The external circumstances are of value chiefly in formulating a policy for the prevention of crime, although the environment should be studied when the question arises as to whether the criminal should be at large.

Garofalo differs from his colleagues in (1) his definition of crime; (2) his classification of criminals; (3) his greater emphasis on the psychological anomaly of the criminal; and (4) his naturally greater stress on judicial reforms, since he alone of the three was a jurist.

In his definition of crime Garofalo eliminates from the term *criminal* all whose actions are not an offense against the sentiment of "pity" or that of "probity." All others whose actions are forbidden by the law are in no true sense criminals, although he admits that the law must take cognizance of them.¹¹ He adds to his definition of crime what seems to be an afterthought and inconsistent with the foregoing in some cases, those acts which are "injurious to society." Therefore, crime, according to Garofalo, is an act that offends the sentiments of pity or probity possessed in the "average measure" by "civilized mankind,"¹² and that is injurious to society.¹³ Neither Lombroso nor Ferri defined crime in this limited way.¹⁴

Garofalo's classification of criminals is fourfold: (1) murderers; (2) violent criminals; (3) criminals deficient in probity; and (4) lascivious criminals. This classification based upon what he calls "moral anomaly" provides, Garofalo thinks, the distinct advantage of "directly suggesting appropriate measures of repression."¹⁵ On the basis of this classification he severely criticizes Ferri's fivefold classification in that it "is without

¹⁰ *Ibid.*, Translator's Preface, p. xiii.

¹¹ *Ibid.*, pp. 45, 59.

¹² *Ibid.*, p. 60.

¹³ *Ibid.*, p. 61.

¹⁴ For criticism of this definition see Ch. II, *ante*.

¹⁵ Garofalo, *op. cit.*, p. 131.

scientific basis and lacks homogeneity and exactness." There is no anthropological justification for the attempt to distinguish the born criminal, the habitual criminal and the passionate criminal. It offers nothing tangible to the lawmaker, since a criminal may with equal propriety be assigned to any one of the several classes, and therefore it precludes the possibility of providing measures of repression answering respectively to distinct classes of criminals.¹⁶

While Lombroso and Ferri do not neglect the psychological anomaly of the criminal, Garofalo puts psychic, or as he prefers to call it, "moral," anomaly at the very center of his theory. With his definition of crime as an offense against what he calls the "sentiments," or emotions, of pity and probity, naturally the inquiry into the causes of such offenses concerns itself with the reason for their absence in criminals. He considers the abnormal physical characteristics of criminals, but only because they help to explain the psychic anomaly. He admits that his work belongs to the school of criminal anthropology only on condition that "it be granted that of this science criminal psychology is the most important chapter."¹⁷

Knowing the difficulties facing the judge and the courts *Garofalo grapples with the reforms in criminal procedure in a more masterful way than either of his colleagues*. No less than Lombroso and Ferri was he aware of the inconsistencies of the legal practices of his day and that they often stood in the way of the repression of crime, but as a magistrate he knew better than they the obstacles to reform and what changes were practicable in the face of established methods.

The result of this combination of radical ideas as to the nature of the criminal with the practical necessities of social defense appears in *his theory of punishment*. This is to be found in his chapter on "The Law of Adaptation." Here he shows that he is the child of the age in which the evolutionary theories of Darwin and Spencer were finding applications outside the biological field. Nature eliminates those organisms that are not adapted to the conditions of life. That same process is followed by groups of people, such as families and clubs. If a person comes into a home and shows by his actions that he does not know how to behave himself there, he is not invited again. If a club member conducts himself in a manner unbecoming a gentleman, he is expelled. So the larger social group, society, eliminates those who show by their conduct that they are not adapted to civilized life.

The *three means of elimination* are (1) death; (2) partial elimination, including imprisonment for life and transportation; and (3) enforced reparation. The first Garofalo holds should be applied only to those whose acts are symptoms "of a permanent psychologic anomaly which renders the subject forever incapable of the social life." Such are the

¹⁶ *Ibid.*, pp. 132-134.

¹⁷ *Ibid.*, Author's Preface, p. xxx.

members of his first class, "those offenders, who . . . are prone to commit murder solely from egoistic motives—the influence of prejudices or the fault of the environment in no wise contributing." For those whose savage instincts make them incompatible with any civilized environment and who therefore are fit only for the life of nomadic hordes or primitive tribes he recommends either life imprisonment or permanent expulsion to a penal colony beyond the sea. He favors the latter of these two alternatives because it does not degrade the criminal as does a prison. He proposes transportation for professional thieves, vagabonds, and habitual criminals. In the case of youthful offenders the elimination should be only relative. For these he suggests agricultural colonies. For others whose anomaly is less pronounced he recommends expulsion of the offender from his particular social situation, that is, he should be permanently prohibited from practising the profession of which he has shown himself unworthy or deprived of the civil or political rights that he has abused. Enforced reparation he would apply to that class of criminals who are guilty of "true natural crime," who do not lack moral sense but lack a sufficiency of altruistic sentiments, and who have committed crime by force of exceptional circumstances or the pressure of a situation that is not likely to occur again. It would apply to persons guilty of such crimes as cause the victim damage in his property or reputation.

Garofalo attempts to show that such a theory of punishment and such methods would fit in well with the public sentiment, which demands punishment not only that the offender may not offend again but also because he has offended; with the object of intimidation; and with the social selection resulting from the more severe punishment of former times. The selection for extermination through capital punishment he believes explains in part the low crime rate in England. In former times England killed off most of those with this moral anomaly and therefore does not have their progeny to deal with to-day. These punishments would not accord with the purpose of vengeance or that of expiation, which as objects of punishment Garofalo abjures.

This theory of punishment, resting on Garofalo's theory of criminality as due to "moral anomaly," has no place in it, so far as the "true criminal" is concerned, for any attempt to reform such criminals. Whatever number among them—always small in his estimation—would be reformed in the overseas colonies or, in the case of younger offenders, in the agricultural colonies at home, would be reformed at home under his plan. He points out in support of his pessimism regarding reformation of such criminals the large number of failures under the correctionalist theories in France and even among the young offenders at Elmira. Elimination, either absolute or partial, from society, in most cases without hope of ever returning, and reparation are the only measures he considers efficacious in the struggle against crime. It must be remembered in all this

that he is discussing only those whom he calls "true criminals." Why he calls his theory the "law of adaptation" it is difficult to understand. It would better have been called the law of elimination on the basis of lack of adaptability.

Evaluation of the Italian School. Despite the vagaries that characterized the Positive (or Italian) school, the place that American writers have accorded it in the development of modern criminological science is one of honor. They were stimulated, although recognizing its lack of scientific methods, by the work of the Italian school. They paid little attention to pre-Lombrosian literature on criminal behavior, not because some of them were unacquainted with it, but because the Italians and their followers raised questions and attempted to answer them by methods that challenged the attention of these American criminologists.

Recently, however, two young students of criminology have sought to put Lombrosianism "in its place," so to speak, and to point to the fact that scientific methods and a scientific spirit were not foreign to all investigations in this field prior to Lombroso's efforts.¹⁸

They have documented in a useful way the writings of those before Lombroso who represented a sociological approach to the explanation of the criminal. They have shown that before Lombroso developed his emphasis upon biological factors there were scholars in Europe who were studying crime and criminals in relation to ecological, economic, and social conditions. They do not point out the biological and anthropological predecessors of Lombroso in European thought. They fail to indicate that Lombroso and especially Ferri did not neglect these other aspects of the problem. And they neglect to give the Italians credit for the enormous stimulus to criminological research through their suggestions as well as through the negative reactions they excited. After all, as Sellin has said, "Whether Lombroso was right or wrong is perhaps in the last analysis not so important as the unquestionable fact that his ideas proved so challenging that they gave an unprecedented impetus to the study of the offender. Any scholar who succeeds in driving hundreds of fellow students to search for the truth, and whose ideas after half a

¹⁸ One might suppose on reading the article by these two young men that the criminologists were as uninformed of these pre-Lombrosians as apparently the two authors were themselves, until they made the great discovery, and rushed into print to enlighten the benighted American criminologists. They cite three American and one English writer to substantiate their statement, "Almost unanimously he [Lombroso] has been spoken of as the founder of modern criminology." Lindesmith and Levin, "The Lombrosian Myth in Criminology," *American Journal of Sociology*, Mar., 1937, pp. 653-671. Most American criminologists were familiar with at least Ellis, *The Criminal*, in the second chapter of which he cites many of these pre-Lombrosians. Many of them were familiar with Quetelet and Guerry, Tarde, von Mayr, Bonger, Mayhew, and others cited by our authors as employing the sociological as opposed to the assumedly Lombrosian biological theory of criminal causation before these authors were born. Yet we owe them a debt of gratitude for calling the matter to the attention of the present generation.

century possess vitality, merits an honorable place in the history of thought."¹⁹

Thus this minimization of the importance of the Lombrosian school from a methodological viewpoint is warranted. It also enables one to improve his historical perspective of the development of criminological theory. But the fact remains that the publicity given the Italian school placed it before American students and served as a prod to its supporters and antagonists alike.

Out of the discussions of this school have emerged various one-sided attempts to explain crime, such as the pathological explanation with emphasis upon epilepsy by the Italians Ronceroni, Ottolenghi, and Capano, upon neurasthenia by Benedikt, and upon psychopathic states by Iggnerios; the advocacy of degeneracy as the explanation by such writers as Magnan, Laurent, Dallemagne, Marro, Galton, Virgilio, Ribot, and Bleuler; the anthropologic-sociologic explanation, represented by Lacasagne, Aubry, Dubuisson, and others; and the socialistic theories of Turati, Loria, Colajanni, and Bongcr.²⁰ Advocates of these various theories based upon the attempt to simplify unduly the problem of the genesis of crime are still with us. Goring in England, representing the biometric emphasis of the Galton Laboratory of London, insists that the criminal is a defective personality.²¹ Bongcr, on the other hand, sees only the economic factors in the production of the criminal and, while not denying the existence of pathological criminals, declares that they are not the subject of sociological study.²² Recently there has been a great revival of emphasis on the psychiatric causation of crime by such writers as Goddard, Healy, White, Hoag and Williams, to mention only a few American writers.²³ Of only one thing can we be sure with our present knowledge: Except in a very general way, we cannot say which of these

¹⁹ Sellin, *American Journal of Sociology*, May, 1937, pp. 898-899. The contrast sometimes drawn between both the Classical and Neo-Classical schools and the Italian school, namely, that the former studied the crime while the latter studied the criminal is not valid in all respects. The contrast is not so much that between study of the crime and study of the criminal as between a theory of punishment and a theory of the causation of crime. The Classical school was interested primarily in punishment, while the Positive school is concerned primarily with understanding why the criminal offends and secondarily with what measures should be taken with him in the light of its findings. Beccaria was interested in the criminal as much as Lombroso, but the point of his interest was the treatment of the criminal, while Lombroso was concerned with the question of why the criminal acts so. It was Beccaria who was interested in the tyrannies under which the criminal suffered. That note is secondary with Lombroso. With Beccaria the interest in the criminal is humanitarian; with Lombroso, scientific.

²⁰ De Quiros, *Modern Theories of Criminology* (Boston, 1912), pp. 32-79.

²¹ Goring, *The English Convict: A Statistical Study* (London, 1913).

²² Bongcr, *Criminality and Economic Conditions* (Boston, 1916).

²³ Goddard, *Feeble-Mindedness: Its Causes and Consequences* (New York, 1914); *The Juvenile Delinquent* (New York, 1923); *The Criminal Imbecile* (New York, 1915). Healy, *The Individual Delinquent* (Boston, 1915); *Mental Conflicts and Misconduct* (Boston, 1917); *Pathological Lying, Accusation and Swindling* (Boston, 1915); *Honesty* (Indianapolis, 1915); White, *Insanity and the Criminal Law* (New York, 1923); Hoag and Williams, *Crime, Abnormal Minds and the Law* (Indianapolis, 1923).

various classes of factors are predominant in the production of the criminal. Much more precise measurement of the valence of each set of factors must be made before the relative importance of each can be stated with anything resembling exactness and before we can predict what will happen in a particular case.

However, out of the discussion and study stimulated by the Italian school have come *some very important results for criminology and penology*. (1) Emphasis has been shifted from legal, metaphysical, and juristic abstractions as a basis for penology to a scientific study of the criminal and the conditions under which he commits crime. In other words, primary emphasis has been shifted from penology to criminology. (2) As a result, what slight attention has been given to penology by those influenced by the work of the Italian school has been based upon *a priori* inferences from their study of the criminal rather than upon a scientific study of experiments in treating the criminal. This is not to say that these inferences have no value as hypotheses that may be tested by social experiment, but for the most part the penology that has grown up in the wake of Italian influence in criminology has been speculative rather than scientific. (3) The old objects of punishment even more than by Beccaria have been seriously altered. (a) Retribution as a purpose of punishment has been eliminated. Criminals are to be treated, not punished. (b) The purpose of deterrence has been modified quite radically, in that it is believed that for those criminals who cannot foresee consequences of their acts any threat of punishment has no effect. (c) Reformation has received a renewed emphasis but is to be applied with discrimination to the various classes of criminals. Prisons should be educational institutions to teach the delinquent new habits. (d) The protection of society is seen to be the primary purpose of the treatment of the criminal. (e) Prevention of crime, by discovering as early as possible those with characteristics likely to lead to delinquency, altering the external conditions that make for crime, and throwing around each person the influences that incite to social behavior, is receiving primary emphasis. As pointed out in the evaluation of the Italian school, certain of these ideas were enunciated by students in the earlier half of the nineteenth century but were overshadowed by the discussions of the Lombrosian anthropological emphasis.

THE MODERN CLINICAL SCHOOL

In spite of the discussion pro and con of the theories of Lombroso and his colleagues, the work of the Italian school has been influential in effecting significant changes in American thought, especially in criminology, to a very much less extent in judicial procedure, and to some degree in penology. What may be called the Modern Clinical school of criminological and penological theory has arisen as the result of the work of the Italians supplemented by more recent research in the modern

sciences concerned with human conduct. To the Italian school modern criminology and penology owes a great debt in spite of the fact that many specific theories of the Italians cannot be accepted. They were leaders in a movement that has meant nothing less than a revolution in the investigation of the criminal and in the theories concerning crime and consequently in penological theories. The Modern Clinical school, like the Italian school, studies the criminal rather than the crime, except as the crime is symptomatic of underlying personality difficulties. That does not mean that the Modern school ignores popular sentiment with regard to the difference in social danger between a violent criminal and a petty thief. It does mean, however, that the Modern school is interested primarily in the personality of the criminal himself in order to determine the conditioning circumstances that explain his criminality and in order to obtain light upon the problem of how he should be handled by the social group.

On the other hand the Clinical school has changed the emphasis somewhat in the study of the criminal. While Lombroso especially emphasized the physical characteristics of the criminal, his two most important colleagues, Ferri and Garofalo, stressed rather the psychological and the social. The Clinical school likewise emphasizes the psychological and the social, but in terms provided by the new knowledge furnished by the later psychology and sociology.

The Modern Clinical school, given its early impetus by the Italians, owes even a greater debt to modern science. Attention is given to the physical factors to-day, but chiefly in the field of physiology and physiological chemistry. Since the Italians wrote, progress has been made in studying the bearing of the physiological functioning of the human body upon conduct, especially the influence of the endocrine glands. With every increase of knowledge in this field this school finds new light upon its problems of criminal genesis and the treatment of the criminal.

Moreover, the advances in psychology, especially the development of mental testing, likewise bring aid to the criminologist and the penologist. With the development of tests touching on the emotions, further light is shed upon human conduct. In addition to these tests our increasing knowledge as to the emotional nature of man has provided additional diagnostic material by which the criminologist may be enabled to understand the criminal.

Growing out of psychology, and not yet as objective in its methods, is psychiatry or the study of abnormal functioning of the mind and emotions. Originally called dynamic or analytical psychology, psychiatry through the work of Freud, Adler, Jung and of many other representatives of the subject in this country and abroad has provided certain theories that throw light upon some of the criminals and suggests possible explanations in certain types of criminal conduct. The movement owed most to Freud, who emphasized the sexual root in mental and emo-

tional disturbance. At the present time, however, it has gone far beyond the basis of Freud. The whole mental hygiene movement belongs here.

The Modern Clinical school also benefits from the emphasis that has come into social psychology through the behavioristic doctrine of conditioned reflex and conditioned response as an aid to the explanation of human conduct. Social psychology, emphasizing the influence of interaction between individuals and groups and the relationship between emotional balance and intellectual integrity, again has benefited the criminologist and penologist and assisted them in the formation of theories that fit the facts supplied by modern science.

In general, the theory of the Modern Clinical school on the side of crimogenesis is that the criminal is the product of his biological inheritance conditioned in his development by the experiences of life to which he has been exposed from early infancy up to the time of the commission of crime. In studying the criminal, therefore, its methods represent an approximation to the processes of modern medicine. By studying the offender in every possible way, the Modern school promises to throw light on his conditioning and arrive at a diagnosis of the factors entering into each individual case. From the standpoint of penology this school attempts to adapt the treatment of each individual in accordance with the diagnosis obtained by scientific study of the criminal. It is clear that the Modern Clinical school entirely repudiates the old theories of punishment—retribution, expiation, and to a lesser degree intimidation—and gives a new content to the old terms *deterrence*, *reformation*, and *protection of society*. Deterrence in the Modern school is of value chiefly to those individuals who compose a large part of the population who never get into trouble. Deterrence does not rest upon the severity of punishment in this theory but upon the far larger base of inconvenience to be feared and social stigma to be avoided. Even reformation takes on a new meaning, and crime is looked upon not as some sort of abstract entity but as a kind of conduct which grows out of the response of a certain kind of biological organism to certain kinds of experiences. Not in a religious or a mystical, ethical sense, but in a scientific sense, reformation becomes *reformation*. As criminal conduct is the outcome of a response by the biological organism to certain conditions to which the organism was subjected, a change in the kind of conduct desired must come about by a reconditioning of the organism achieved by subjecting it to a new set of circumstances and experiences. Imprisonment under this theory should be retained as a method of treating those who fail to respond to extrainstitutional methods intended to change their way of living and their conduct and who must be kept quarantined from society. For the others new terms have been invented, such as *correctional treatment* or *reorientation*.

Already new penal institutions have risen in response to this theory. Those who upon diagnosis are found to be suffering from either physical

or mental disease are placed in appropriate hospitals. Those who are the victims of social conditions, whether of family or community origin, are placed in different conditions with the hope that they will respond in a different way. So we have probation, correctional colonies, and such arrangements. Juvenile and other courts that have had attached to them clinics of various sorts for the examination of those charged with crime, psychiatric field service to be found in a number of our states, and the anthropological service of the Belgian prison system all are devices which have been invented to meet the situation revealed by the Modern Clinical school. Much remains still to be done, however, in reorganizing our courts, our criminal procedure, and even our institutions in accordance with this new theory of the nature of the criminal and the new penal theory.

It is clear, therefore, from this brief survey of the development of criminological and penological theory, that mankind has developed theories of criminal behavior, and of the purposes of punishment, in accordance with the cultural configurations of different societies. That is also true of his methods of punishment, as we shall see in subsequent chapters. Always the theory growing up in one cultural configuration holds over into that with a changed cultural context. Often, therefore, in a given society side by side are two or more theories and practices inconsistent with each other. Witness the concurrent existence of the theories of retribution and reformation, or of the practice of mutilation and that of training for a vocation.

Even this brief survey of the history of punishment and the accompanying theories of its purpose would not be justified, were it not for the fact that unless one understands something of that history, many things in our present practices are puzzling. To one unacquainted with the history of the methods of ascertaining the guilt or innocence of the accused, our court procedures must be amazing indeed. So with our methods of punishment—fines, jails, work camps, prisons, reformatories, and so on.

The chapters in Parts IV and V will describe and evaluate these various agencies and institutions. It will help to understand and to criticize constructively the hodgepodge of institutions and agencies for the catching, trying, and treatment of criminals, if we have this history in our minds.

QUESTIONS AND EXERCISES

1. Point out the differences between the Classical school and the Italian or Positive school.
2. Which school has the most influence in present-day legislation and court practice? Explain.
3. Distinguish between the Clinical school and those previously discussed.
4. What effect would the acceptance of the Italian school theories have upon judicial procedure? acceptance of the theories of the Clinical school?
5. Point out the logic of each of these schools in the method of treating the convicted offender.

Chapter XV

A SOCIOLOGICAL THEORY OF CRIME¹

Society Is a Natural Product. Society is as much a natural product as the earth on which we live, the various orders of plants and animals that inhabit it, or the geographic features that meet our eye. Society is "natural" in the sense that the relationships characteristic of human beings living in association grow out of the reactions of biological beings to their own inner tensions and drives, to the natural environment, and to other beings. The human being reacts in some situations and to some stimuli just as other animals; he starts at a sudden sound or sight, he jerks his hand back from anything that suddenly causes pain, and so on. But the human being differs from other animals in that apart from some of these elemental reflexes, the pattern of his reaction to stimulus is very much broader than that of other animals. His reactions are governed less by instinct and more by reason. He has the power to conceptualize a situation and his reaction thereto. His conceptualization of a situation may be based upon an erroneous interpretation of the facts as he has observed them, but with his theory of what those observed facts mean, his reasoning is logical. He observes that a whirlpool overturns a boat and its occupant drowns. Knowing nothing of the dynamics of moving water, he may conceive, or he may be told, that a hostile spirit dwells in the whirlpool and destroys any one who comes within its reach. What more logical, then, than an offering that will appease the spirit? So with his social relationships. He observes that isolated individuals are much more likely to perish from the hostile forces of nature than congregate groups. Hence he sets up certain ways whereby individuals living together may get along peacefully and helpfully. He notices that there is less danger of quarrels between the individuals composing a group if the sexual partners are faithful to each other rather than if they are philanderers. Hence he and his fellows establish sexual taboos. Sickness and other calamities visit the group. He does not possess

¹ Sutherland has developed "A Theory of Criminology" in his *Criminology*, Third Edition (Chicago, Philadelphia, New York, 1939), Ch. I. His theory, however, is limited to "systematic criminal behavior, either in the form of criminal careers or organized criminal practices," p. 4. I prefer to formulate a theory of all delinquent behavior in a frame of reference of the whole sociological configuration, and with attention to the various social processes found among associating human beings.

our knowledge of the nature of disease and of natural catastrophes. In his anxiety he may haphazardly or experimentally perform some act. Following the act the disastrous consequences he feared may not happen. He interprets that act as a means of preventing the threatened danger, remembers it, and when the danger threatens again he is likely to repeat that act. Thus an habitual or customary action may arise that has a meaning for him and his fellows and so becomes obligatory. So with every exigency that faces the group. Out of such situations, we may suppose, grow those approved ways of acting that characterize life in human societies. Since groups may interpret their experiences in different ways, they have varying customs, beliefs, folkways, ideologies, hence the widely different systems of belief and patterns of behavior governing every phase of their existence to be found among different peoples. These differences testify to the wide range of possible interpretation and formulation of conduct possible to *homo sapiens*. These social arrangements are man-made, but they develop out of the total situation, physical and social, to which human beings must make adjustment in order to survive. Varieties of human actions and institutions are limited by the nature of man and by the environment in which he lives. While the range of possible reactions is greater for human beings than for animals, it is still limited by the characteristics of human kind and by the nature of the external world.

Crime Is Natural. It is often said that crime is abnormal. In the strict meaning of the word *abnormal*—departing from the “norm”—that is true. It is also said of some crimes that they are “unnatural.” The term is applied to such acts as the murder of child or parent, or to homosexual relations. Among many pre-literate peoples the implication in such use of the term was that the act was produced by some occult force or forces—the Devil, or less definite but mystical agencies. But if one grants that normal conduct is the product of factors that can be studied objectively, then criminal conduct can be explained by the same methods. Both types of behavior are “natural” in the sense that they result from the interplay of factors residing in the human organism, in the external world, and in the reactions of human beings to the non-human environment and to other human beings. Criminal as well as socially approved conduct is the product of natural factors.

Crime Is a Social Product. Here again both criminal and socially approved conduct are the result of the interaction of associates. This is true in two different senses. (1) A social group establishes the norms of behavior that it approves or tolerates, and defines the conduct it considers criminal. (2) But from the standpoint of the genesis of criminal conduct society provides the social stimuli to which the individual member responds. Here are to be found the varying ideals and patterns of behavior in the family, the neighborhood, in play groups, and so on, to which the child or the adult responds, in which he forms his habits and

develops his reactions to other individuals. In society are to be found the pressures intended to mold the individual into conformity with the accepted standards of conduct. But also in society are found the subgroups with norms of conduct varying from the patterns approved by the dominant group. Even the heredity may be subject to social control.

Crime Is a Product of Social Interaction. The analysis just sketched enables us to understand how human beings living together develop certain beliefs, ways of behavior toward each other, and what we call social institutions, which govern their lives. These patterns resulted from interactional experiences. Men congealed these ways of behaving into institutions through custom and tradition. Like every other activity of men in association, what we call crime is a mode of behaving. As well as socially approved conduct, crime also is the result of interaction between human beings. Whether social interaction results in socially approved conduct or in crime depends in part on the type of interaction. Like all human behavior crime grows out of the relation of the drives of the individual to the controls society sets up for the channelization of those drives in the interest of the controlling group or in the interest of the whole society. If the drives have been channelized for a long time, men's behavior becomes institutionalized. Until radical changes are introduced, there will be little variation from socially approved conduct. If through the introduction of fundamental changes there is institutional conflict, individuals and subgroups will deviate. Individuals in a group are seeking to satisfy their desires. Society attempts to have the individuals satisfy their basic urges in socially approved ways.

But two human beings do not always react alike to the same social situation at any given point in their lives. Here is a law-abiding man who lives in the same community with one who becomes a criminal. The one may be subject to the same temptations as the other. Both may be poor, so poor that they and their families are starving. One goes to the relief office and the other gets a gun and holds up a filling station. How explain the difference in behavior? One has to go back into the history of these persons and trace their experiences in order to understand why each reacted to the same situation in a different way. But, say some, it was a difference in heredity. Perhaps. But consider that from all the anthropologists can teach us, there is no evidence that the different races of mankind vary greatly in inborn characteristics. In spite of differences in color all races seem to possess about the same ability to react to a given situation. Their chief differences seem to be in their culture. Chinese who share our culture long enough seem to have no innate incapacity to adopt it as their own. American missionaries who have spent long periods in the interior of China readily adopt Chinese ways.

However, in any race or people there are differences between individual members living in the same culture. Some are more intelligent, ingenious, inventive; musical, mechanical, and so on, than others. These differences

may in some cases be due to variations in training. But some seem to be differences in inborn capacity. Who has not seen some child given every facility for years under the most famed teachers of music and yet never become an outstanding musician? These individual differences seem to be based on inborn variations. The most patent example is the difference in capacity between the hereditary feeble-minded and the ordinarily intelligent person. These innate peculiarities, however, do not alone determine the behavior of the individuals who vary in their capacities. The conduct even of the feeble-minded can within the limits of their capacity to learn be shaped by training. The person who has no capacity to become a musician may be trained to be an excellent nurse, teacher, or some other useful worker according to his aptitude.

Further, there is evidence that some individuals have capacities that have never been developed. They never had the opportunity. Their surroundings during their early development were such as not to evoke the inherent capacity they had for a certain activity. Apparently the number of those whose native capacity fits them for any special activity is small in the total population of any people. Most individuals are by inheritance equipped for a variety of occupations. This seems to be true of behavior of every kind. How an individual will respond to the demands of society seems to depend chiefly upon his experiences from his earliest days. In these experiences he learns to respond at first in random ways. Gradually he is taught by the reactions of those who have his care, or who are his associates, to respond according to one pattern or another. If his caretakers, parents, teachers, and companions are wise in knowing how to evoke responses in accordance with the standards approved by society, he learns to behave as a respected member. If they evoke reactions contrary to accepted patterns, the delinquent may be produced. In each case habit tends to perpetuate the respective way of acting. Thus one individual during his development has not become as completely socialized as another. That is, he has not made a part of himself the norms of the dominant group in society. On the other hand, during a period of rapid changes in society the norms of behavior are not clear and definite; the old standards are disintegrating; new ones have not been widely accepted, and thoroughly imbedded in tradition and custom. In such conditions the individual may become confused as to just what is socially required. Under such circumstances frequently subgroups in a society establish a pattern of action differing from that approved by the dominant group. Thus a member of such a subgroup is likely to adopt the modes of conduct accepted by that group, although such behavior may be at variance with that approved by the controlling group. As the latter through custom or law places penalties upon the disapproved conduct, that behavior becomes criminal. Hence crime and socially approved conduct are products of differential social interaction.

The Social Processes and Criminal Behavior. The general social proc

ess of individuals living in association is social interaction. The behavior of each, including speech, gestures, facial expression, and other actions, is observed by other individuals. Others react to the actions of the individual observed. It is from the observation of how the other individual acts that each person in the community makes up his mind with respect to him. He likes or dislikes him. He thinks well of his ideas and his behavior or thinks ill of them and reacts accordingly. Thus there is the interplay of action and reaction between associated individuals.

This general process of interaction characteristic of human beings in association is divided into a number of subprocesses. Sociologists have observed that these subprocesses fall into two classes: the dissociative processes and the associative processes. Among the dissociative processes are conflict, competition, and contravention. Among the associative processes are accommodation, acculturation, and assimilation.²

The dissociative processes—competition, conflict, and contravention—especially mark the development of criminality. These processes are signs that the society is divided into groups with different interests, diverse patterns of behavior, and varying systems of values. Each group defines the situation for itself differently from each of the others. As with groups so with individuals. There is no harmonious agreement because in the folkways and the mores the varying interests, culture elements, and values of individuals and groups are not harmonized. Hence law is invoked, with its penalties, to produce a kind of harmony with respect to certain values and attitudes that are conceived to be of the greatest importance to the preservation of the whole society. Since this definition of the situation is at variance from that which is to be found in some subgroups and often among different individuals, the latter find themselves in disagreement and feel justified in breaking the law. Or if they do not break it, their attitude toward it is such that they render support to those who feel frustrated and justified in breaking the law.

Even the associative processes to be found in the subgroups make for criminal attitudes when the values and modes of behavior of the subgroup are at variance with those of the great society of which they are a part. From the studies that have been made of criminals and juvenile delinquents, association with members of these groups whose definition of the situation and whose system of values are at variance with those defined by the greater society in custom and in law, appears as the most important genetic factor in a criminal career. These subgroups are socially integrated about a set of attitudes that, if expressed in overt action, the law calls criminal. Crime is more characteristic of societies that have not been able to assimilate to a common mode of behavior

² For those who desire a fuller exposition of the nature of each of these subprocesses see Wiese-Becker, *Systematic Sociology* (New York, 1932), Part II; Park and Burgess, *Introduction to the Science of Sociology* (Chicago, 1921), Chs. 8-11; Ross, *Principles of Sociology*, Third Edition (New York, 1938), Part IV; Gillin and Gillin, *Introduction to Sociology* (New York, 1942), Chs. 24-28.

all the individuals and groups of which it is composed. It is commonly said that such a society is to some degree disorganized. By that is meant that it has not been completely integrated. No completely integrated society actually exists, or, indeed, has ever existed. The nearest approach is to be found in such isolated societies as that of China until the eighteenth century, that of remote islands, and that of medieval Europe before the Crusades and before the Renaissance. Nevertheless it is clear that some societies are more completely integrated than others. In some the associative processes of accommodation, acculturation, and assimilation are much more highly developed than in others. In these crime is less conspicuous than in those in which the dissociative processes are more in evidence.

Crime and Rapid Social Change. In a society undergoing rapid change, crime abounds. Change, especially rapid change, brings about disruption of the established folkways and mores and the disintegration of institutions. All societies undergo some change, but in highly dynamic groups the changes are so numerous, rapid and fundamental in nature that the usual controls over individual conduct are loosened with the result that social control gives way to individual caprice. Systems in which little change is gradually occurring definitely define, through the folkways, mores, and institutions, the conduct expected of each individual. The definition is so clear and universally accepted that only widely variant individuals depart from the established ways of life. Tradition and custom make acceptance easy and almost automatic for most individuals and for any subgroups. But when change fundamentally affects any phase of the life of a group this clear-cut definition of the situation³ becomes distorted and confused. Such radical changes may arise by new inventions affecting the cultural equipment of the society, by the introduction of new ideas and ideologies, and new sets of values. As a consequence, instead of one definition of the individual's duties and privileges, there arise divergent definitions with some individuals holding to the old traditional and customary ways of acting and thinking, and with others taking up the newer definitions of the situation. As a consequence individuals find themselves torn between two or more ways of behaving. In such a situation an individual may choose to act at variance with the customary and traditional pattern. It is in such a situation that the dominant group attempts to control the conduct of individuals by the enactment of laws forbidding certain types of action. They substitute law for the controls of custom and tradition and impose penalties upon those who vary from the pattern set by those laws. Such variation becomes criminal. Hence criminality is most characteristic of societies that are undergoing rapid and fundamental changes.

³ The term *definition of the situation* is borrowed from Thomas and Znaniecki, *The Polish Peasant in Europe and America* (New York, 1927), 2 Vols., Part I, "Methodological Note."

Such changes may be in the direction of progress, may consist of technological improvements, new ideas with respect to how one should behave in social situations. Or on the other hand they may, either because of their nature or because of their fundamental divergence from the accepted definitions of the situation, tend toward social disintegration. In the first instance, those who are unable to readapt themselves to new methods of economic production find very great difficulty in making a living, may become unemployed, slowly die of starvation, become vagrants, beggars, and criminals. This was to be seen following the Industrial Revolution in England when vast numbers of the hand spinners and weavers were thrown out of employment by the introduction of machines. It is to be seen to-day when the invention of new technologies, the rise of new theories of the nature of the universe, and new philosophies of life have raised questions as to the sanctity of the old sanctions of moral conduct. It also may be seen in the social deterioration of minority peoples in contact with the culture of peoples with more efficient equipment and organization, such as the Maoris in New Zealand, and the American Indians in contact with white civilization.⁴ Or it may be seen in the children of immigrant groups to this country who experience a conflict of loyalties to the culture of their parents, on the one hand, and to the new culture of the United States in the midst of which they are growing up, on the other. Therefore, whether the changes that are taking place in a society mean ultimate social progress or social disintegration, the definitions of the situation become varied instead of uniform, and individuals are more likely to display reaction against the pattern approved by the dominant group, and so to get into trouble with the law.

Society Molds the Personality. At birth the child is an individual, not a personality. He is born with a biological organism developed out of the matings of all the past. That organism forms the basis for a pattern of responses to stimulation from within or from without the organism. The responses possible to the human being are more numerous and varied than in the case of any of the lower animals; yet there are limits set by the biological constitution. No longer can we assume with Locke, the English philosopher, that the child is a kind of *tabula rasa* upon which the environment may write anything it pleases. The human being at birth has certain capacities and definite limitations common to the species. Also between individuals at birth seemingly there are differences in capacity. These differences, emphasized by biologists and some psychologists, fix limits to the development of the personality, account in part for the way in which the individual responds to stimuli

⁴ Walter Reckless has done a real service in gathering together illustrations of a low incidence of criminality in small, homogeneous societies and the growth of crime in such societies after they have become disorganized by contact with a different culture. See his *Criminal Behavior* (New York, 1940), Ch. III.

and in which he accepts or rejects culture elements, and determine to a degree what parts of the culture he integrates into his own personality. Nevertheless, it is equally true that the culture of a society plays a part in molding the personality. No matter what the individual biological differences, all the individuals in a society conform more or less closely to the customs and folkways and hold as their own the beliefs, traditions, ideals, and values of their society. Social pressures of every sort play upon each individual from the moment of birth. His personality is the result of these pressures responded to by his biological nature. The way in which social influences affect his conduct, the social processes which characterize the development of his personality, and differences in the social pressures to which he is subjected constitutes the sociology of personality.⁵

Society Disorganizes the Personality.⁶ But society also may disorganize the personality. Different individuals grow up under varying social influences. Not all families use the same methods of training children, present to them the same patterns of conduct, identical systems of belief, ideals and values. Hence children from different families do not behave in the same manner. Moreover, in a family not all the children are treated in an identical way. One may be favored over another. Thus different patterns of response may arise. Again, individuals may from childhood become members of subgroups within a society. These subgroups may have a culture differing from each other and from that of the larger society, as in immigrant groups, gangs, and the like. In so far as the culture of these groups varies radically from that of the dominant culture, the individual may develop a personality with traits condemned by the socially accepted pattern. The result may be a frustrated, disorganized personality. In view of such a situation, with the definition of approved conduct long accepted in a society challenged by new definitions of conduct, the individual may become confused as to what are the proper norms of conduct and so come into conflict with the law. He may find it difficult to reconcile in his own thinking and acting the conflicting patterns of behavior, may react against the order that is protected by legal sanctions, and may commit crime or become a leader of subgroups the members of which endeavor to find satisfactory association with individuals of their kind. Thus spring up the gangs and criminal groups in American society. Their reaction varies all the way from behavior that is antisocial but yet within the law, to outright violation of the law.⁷ Under the impact of rapid change the old customary and traditional sanctions disintegrate. New ones have not yet had time to arise and receive general acceptance. In the meantime the

⁵ For detailed analysis of this matter see Young, *Personality and Problems of Adjustment* (New York, 1940), Part I; Sellin, *Culture Conflict and Crime* (New York, 1938), pp. 25-29.

⁶ Young, *op. cit.*, Ch. XXIV.

⁷ Tannenbaum, *Crime and the Community* (Boston, 1938), Ch. III.

dominant group endeavors to control the actions of individuals and subgroups by a legal definition of the situation and substitutes legal penalties for customary sanctions as methods of control. This situation gives us not only criminals but also the phenomenon of citizens who may be outstanding members of churches and of other respectable organizations in the community but who at the same time in their business grind the faces of the poor, produce or sell shoddy goods, charge exorbitant prices, and resort to sharp practices in trade. They may manipulate the finances of their businesses in ways that mean the virtual embezzlement of the life savings of investors in their securities and yet keep within the law and be looked upon as great philanthropists and respected citizens. They may talk patriotism and yet in their own private lives be following practices that undermine the social solidarity of the group. They may be important leaders of labor organizations and yet use the organization for their own personal aggrandizement. It is this confused situation resulting in the non-integrated personality with an inconsistent moral code in all relationships that led some cynic to say, "Steal a loaf of bread and go to jail; steal a railroad and go to Congress." If leading citizens in such circumstances have no clearly formulated definition of social behavior, it is not surprising that adolescents and young men and women have confused moral standards.

So far as the sociological aspects of criminality are concerned, it is this confusion in the social norms of a society that provides the seed ground for a flourishing crop of criminals.

Such in outline is the sociology of crime. Such a theory does not decry the biological basis of conduct; it supplements it. It is not the business of the sociologist to emphasize or to minimize the importance of biological constitution in the making of the criminal. It is his function to point out the part played by the social influences in the formation of criminal behavior, and the social processes resulting from the interplay of the social factors and the biological organism.

We may summarize the sociology of crime as follows:

1. Crime increases with the heterogeneity of the culture in a society. Culture defines the conduct acceptable to the dominant group. If the culture is homogeneous, the conduct expected of every individual is defined for all ordinary situations he may face. If it is heterogeneous, there is a conflict of definitions; hence alternatives are open to each individual. But custom and law are enforced by the dominant group upon those whose conduct may be a socially disapproved response to a conflicting definition of the situation. Such deviation is crime.

2. Conflicting patterns in a culture, especially among the universal elements in that culture, result in a conflict between those who accept the patterns of the dominant group and those of the subgroup with a different form of conduct. The conduct of the latter is defined as criminal by the dominant group.

3. Transmission of the modes of behavior to the individual in these respective groups takes place through association, precept, example, and other means of communication. Hence the individual who associates with those who accept the approved codes of conduct are, according to the dominant group, "good" mem-

bers of society; and those who associate with persons who have defined conduct in a different way are the criminals. The association may be by face-to-face contact. This mode of association is probably the most effective way of transmitting ideals, attitudes, and patterns of behavior. Here precept and example operate most powerfully. However, one may associate with another by reading or by seeing plays or moving pictures, and may identify himself with the personalities represented in them. In any case association is only the channel through which ideals, attitudes, and forms of conduct are presented for acceptance or rejection. Identification is necessary to make the characteristics presented by the persons observed copied by the observer. Identification takes place because rôle and status are sought for by becoming like the admired personality.

4. Crime is a function of the response of the human organism to the social configuration of society. The social norms are mediated chiefly by personal-social relationships.

QUESTIONS AND EXERCISES

1. Compare the theory of the origin of criminal conduct as outlined in this chapter with the theory of Lombroso.
2. In what respects do the theories of the psychiatrists as to why people commit crime differ from the theory set out in this chapter?
3. Apply the sociological theory of the development of criminal conduct as set forth in this chapter to the explanation of the career of Al Capone; of "Two-Gun Crowley"; of Krueger, former president of the International Match Co.

Part IV

THE MACHINERY OF JUSTICE

Chapter XVI

THE POLICE

When a crime has been committed, the offender must be discovered, apprehended, tried in a court of justice, and then dealt with by one or more of the various methods to be described in Part V. Naturally we begin with the police, using that term to cover the ordinary officer who walks the beat, the officers of the force, and the detectives whose business it is to discover the culprit when he has not been taken in the act.

ORIGIN AND DEVELOPMENT

Originally the word *police* meant the internal economy of a nation, or the internal arrangement of government. In a secondary sense the term meant the instrument by which the regulations of government were enforced. Even when Blackstone published his famous *Commentaries* in 1765, the narrower meaning had not been invented. He wrote, "The public police and economy must be considered as the due regulation and domestic order of the kingdom whereby the individuals of the state, like the members of a well-governed family, are bound to conform to the rules of propriety, good neighborhood and good manners."¹ The same meaning is to be seen in the works of Hume and Adam Smith. The limitation of the meaning to a body of officials charged with keeping the peace is attributed to certain French and German writers.²

In England. In England the word was first used in the restricted sense in which it is now employed in an act of Parliament of 1787 that established a constabulary system for Ireland.

The *function* of the modern police is to be traced back to the ancient constables and night-watchmen of England. Blackstone is authority for the statement that the English borrowed the constable from the French. The original peace officer of communities in England was the justice of the peace. As such he had both the judicial and the administrative

¹ *Commentaries*, Tenth Edition (London, 1787), Vol. IV, p. 162, quoted in Fosdick, *European Police Systems* (New York, 1916), p. 3.

² Palgrave, *Dictionary of Political Economy* (London, 1910), Vol. III, Article "Police." For an extended account of the origin of the police system of England see Reith, *The Police Idea* (London, 1938).

functions of the modern police. However, the Statutes of Westminster in the reign of Edward I ordained that in every hundred two constables should be chosen, who came to be known as *high* constables. These were charged with the peace of the hundred, while those charged with the peace of the parish or township were called *petty* constables.

These officers charged with the duties of "watch and ward," as preserving the peace is called in the ancient statutes, were quite satisfactory so long as the conditions of living were simple. But when cities developed and people moved about from one community to another, the increasing complexity of life made it impossible for the constables to deal adequately with the problem of crime. So critical had become the situation near the close of the eighteenth century that committees of the House of Commons in 1772 and 1793 called attention to the need of a better system of protecting the public. In 1812, 1817, 1818, and 1822 other committees of the Commons reported conditions that demanded other arrangements than the ancient local constables. One of the English magistrates, Dr. Colquhoun, before the end of the eighteenth century had called attention to the matter in a book, *On the Police of the Metropolis*. Finally in 1828 another committee of the Commons, appointed at the instance of Peel, then the home secretary, to inquire into the causes of the increase of crime and the relation of that increase to the methods of the constables, brought in a report that frankly urged a change in the method of protecting persons and property in the Metropolis. In the following year, 1829, was passed the famous metropolitan police act, which established for London a police force separate from the old constabulary and which served as the model for the later laws providing for police forces for the various cities and counties of England and Wales, and later for the whole United Kingdom.

This act fathered by Peel, which at first was strenuously opposed, has had great influence all over the world in the development of the police. To the opprobrious names given to these police by the enemies of the measure we owe the familiar designations of the London policemen to this day. Because the act was sponsored by Sir Robert Peel, the policemen at first were called "Peelers" and "Bobbies." By the last term they are still known.

In the United States. In the American colonies the influence of English precedents is to be seen in the parish constables and the "night-watch" made up of civilians taking their turn in guarding the community. Boston established its night-watch in 1636. The other cities of the Atlantic coast followed the same custom. Even the Dutch of New Amsterdam had their "Schout" and "Ratelwacht" (rattle-watch, so called from the rattle that the watchman carried about with him).³ When the English

³ For illustration see article "Police," *Literary Digest*, Dec. 2, 1922, p. 38. In Tokyo, Japan, in 1927 my sleep for the first few nights was disturbed by the policeman's rattle as he went his rounds.

took over New York, they established the English system of constables and watchmen in the Dongan Charter of 1686. Evidence has been found to show that practically the same system was established in all the early colonies.⁴ This system of constables and night-watchmen continued for about a century and a half before the growth of cities and the complexity of life here, as in England, showed the incapacity of the system to deal with changed conditions. Frequent reports are found of watchmen asleep, of the difficulty of getting the citizens to take their turns as watchmen, of the appointment of political henchmen, of drunkenness and crime among the watchmen, and of lack of coördination between members of the force in the different parts of the city.

Moreover, with the growth of cities it became necessary to provide for peace officers for the daytime. The constables might serve very well in the country for the serving of summonses and other papers, but they were men otherwise employed and could not give all their time to the work of preserving the peace and catching criminals. Hence early in the nineteenth century several of the larger cities developed a day police separate entirely from the night-watch. Philadelphia, stimulated by the provision in Stephen Girard's will of a sum of money to provide that city with "a competent police," passed an ordinance providing for a day police force of twenty-four and 120 night-watchmen. Unfortunately this ordinance was repealed in 1835, and the system was not reestablished until thirteen years later. Boston adopted the plan of day police in 1838. New York and Cincinnati followed with similar organizations soon after. Soon some of the police in certain cities were assigned to night duty, although the night-watch continued.

Under the plan of separate day and night police forces evils appeared that were accentuated by the riots that occurred in a number of cities in 1835 and subsequent years. These separate forces were unable to control the mobs. New York in 1844 took the first practical step to correct the evils growing out of the two separate forces. In that year the legislature passed a law establishing "a day and night police," that is, a unified force under a single direction. This law abolished the watch system, which for so long had been the reliance of the people for protection of person and property at night. Ten years later Boston consolidated the "watch department" with the day police. From this time on all the leading cities of the country followed the example of these two in providing for a unified police system, under a chief or commissioner often appointed by the mayor—sometimes with the consent of the council—and sometimes elected by the people. Thus developed in the United States the municipal police. The further development in the organization of police departments—the matter of uniforms, which were not generally adopted until after the Civil War, the different kinds of boards governing the police, the methods of choosing the members of

⁴ Fosdick, *American Police Systems* (New York, 1920), pp. 58-60.

the force and the chief, the shifting of control from the municipality to the State and back again, the various experiments to correct the evils discovered in the American police forces—there is no space to trace.

One outstanding feature of this history in the United States as contrasted with the development in England is the frequency of change in organization of the police. Since the organization of the Metropolitan Police of London in 1829 but one decided change in method of control has been made, while since the foundation of the New York Police in 1844 there have been nine fundamental changes in the organization. Fosdick says that of these nine changes scarcely half were made in good faith.⁵ The rest were the results of political maneuvering.

The Sheriff. Another peace officer who has to do with criminals is the sheriff. In the United States he is a county officer who serves in both a criminal and civil capacity. He apprehends criminals and also serves civil processes and summonses.

This officer can be traced back at least to Anglo-Saxon times in England. Kemble pictures him as one of the head men of the shire or county at that time. He functioned as (1) the head of the county court, probably at first elected by the people, but later appointed by the king; (2) the executor of the decisions of the court, including the execution of criminals convicted of capital offenses; (3) superintendent of the minting of the coins; (4) principal fiscal officer of the county, levying the fines accruing to the king from offenders and collecting the taxes; and (5) leader of the militia.⁶ Gradually the broad powers of this official—civil, judicial, and administrative—have been more and more limited until to-day in the United States practically all his judicial functions, some few of which still remain to him in England, have been taken from him. Certain of his old civil and criminal functions still remain even here; he collects the taxes in some States and conducts sheriff's sales of property sold under a mortgage, or for delinquent taxes. He still takes and holds those suspected of crime, and those sentenced to the county jail. In some states where capital punishment remains he executes the criminal. In many of the more rural counties he is the policeman and the detective for the county. The division of authority between the county sheriff and the police force of a large city located in the same county is likely to result in conflict of authority.

The Marshal. Another peace officer to be found in many American communities is the marshal, often designated as the town marshal, because he is an officer of the town or township. In the smaller places in the United States he often makes arrests for petty offenses and lodges the accused person in the town jail or lockup.

The term *marshal* is derived from a royal officer who had charge of the horses in late medieval times, and goes back to the Byzantine court.

⁵ Fosdick, *American Police Systems*, p. 115.

⁶ Kemble, *The Saxons in England* (London, 1876), Vol. II, pp. 157-166.

As a legal official having to do with courts and criminals, the term is to be traced back to Statute V, Edward III, Chapter 8, where we find a marshal of the king's bench who presided over the Marshalsea Court and was responsible for the safe custody of the prisoners in Marshalsea Prison. Moreover, there was an official known as a judge's marshal of considerable antiquity who made abstracts of pleadings and of indictments for the use of the judge. This official still survives in England, but with different functions. He now accompanies a judge of assize and circuit and is appointed by him at the beginning of each circuit.

In the United States we have the United States marshals, each of whom is executive officer of a federal court, one or more in each district. He is appointed by the President of the United States, with the advice and consent of the Senate, for four years. The term is also applied sometimes to special officers, similar to special constables in England who maintain order in times of disturbance. In some Western and Southern states he is a village policeman as distinct from the county sheriff and the constable.

The Coroner. Another ancient officer concerned with one crime, that of murder, is the coroner. The office was certainly in existence in England as early as the reign of Richard I. It was an adjunct of a court, and in ancient times the coroner performed many duties, but then as now he inquired into deaths when the cause was unknown, especially when foul play was suspected.

The system was brought to America by the English settlers and has continued here in much the same form as when it was introduced. It is the business of the coroner to inquire into the cause of death of any one found dead when it is not clear that the person died from natural causes. If the inquest shows that there is reason to believe that the deceased came to his death at the hands of some other person, the coroner makes his report to the prosecution official. He is not a part of the police machinery.

In most of our states he is elected for two or four years. Only a few states require him to be a licensed physician. Consequently he is usually a petty politician who seeks the office to further his own interests. In populous counties he often appoints medical officers to make the medical examinations required in many cases.

Studies of the operation of the office by a number of the crime surveys have shown how loosely it functions and what abuses arise in connection with it. As a consequence there is a growing trend to eliminate the office of coroner and divide his historic functions between a medical examiner and the district attorney. New York City and all the New England states except Connecticut have made this change. In New York State and New Jersey the system is optional. Under the system of separating the medical function from the legal, much better results are obtained.

FUNCTIONS OF THE POLICE

By reason of differences either in constitutional conception of function or in social and economic conditions the functions of the police differ from country to country.

Constitutional Differences. The function of the police in England is other than that on the Continent. In England and in the United States the police power of the state in respect to many matters is largely committed to special bodies such as commissions, boards, and so on. On the other hand, in the Continental countries of Europe many of these functions are performed by special divisions of the regular police, Insurance Police, Mining Police, Water and Dike Police, Field and Forest Police, Trade Police, Fire Police, Hunting Police, Health Police, Political Police, Roads Police, and many others.

Differences in Social and Economic Conditions. The composition of the population materially affects what the police are called upon to do. Compare the United States and England. In only fourteen of the fifty largest cities of the United States in 1920 did the native element equal half. Then in our cities we have the Negro and other races. On the other hand, only 3 per cent of London's population was foreign-born.⁷

The stage of economic development has a very direct bearing upon the functions of the police. An industrial city has strike problems not to be found in residential cities. Stratification along economic lines leads to class consciousness and possibilities of trouble not to be found where such conditions do not exist.

In large cities crime is a much more serious problem and requires much more careful attention than in rural districts. Police are called upon to perform all kinds of duties in such cities that the officers of the peace in rural communities never have to trouble themselves about.

Furthermore, the temperament of the people and their social customs affect very directly the activities of the police. The Englishman with his long discipline in the orderly process of justice presents an entirely different police problem from that of the Sicilian who for centuries has been accustomed to taking the law into his own hands for the adjustment of private wrongs.

In addition to these factors that condition the function of the police in different countries there are the delays of the law, the technicalities of our courts, and the maudlin sentimentality of the public more or less characteristic of the United States. If prosecuting attorneys do not do their work well, if judges do not support the police in their work, if courts tolerate technicalities of procedure that defeat the ends of justice, if there are delays that make the criminal feel it is easy to escape his just deserts, then the police are working against conditions that make success almost impossible. Moreover, if public sentiment does not condemn these

⁷ Fosdick, *American Police Systems*, pp. 4-6.

faulty practices of our courts and the weaknesses of our laws and is indifferent to factious, national groups and gangs seeking pardons for hardened criminals, then the police can do little. Again, while we make the police swear to uphold the Constitution and enforce all the laws, we place upon our statute books such a multitude of laws as to make criminal many offenses that public sentiment does not so regard. As Fosdick says, "Nowhere in the world is there so great an anxiety to place the moral regulation of social affairs in the hands of the police, and nowhere are the police so incapable of carrying out such regulation."⁸ In every state of this Union there are laws upon the statute books that nobody, or a very small number, really approves, but that were enacted by the legislature at the instance of a small group. They do not command the allegiance of the popular will, because they are not established in the beliefs and traditions of the people and often directly violate the habitual traditions and customs. Instances of these may be seen in the Sunday closing laws, enacted in almost every state, which are almost universally ignored and violated. It has been estimated that there are 16,000 statutes, federal, state, and city, applicable in a given city. Not even a trained lawyer knows all these laws. How then can we expect the police to enforce them? The consequence is that as a practical matter the police enforce only those laws for which there is a rather keen public demand. There is not a police force in the United States that cannot be convicted of malfeasance in office on the basis of their oaths. The fault, however, is not with the policemen but with the public that insists upon passing this multitude of laws, upon all kinds of subjects, for which there is no popular backing.⁹

Functions of the Police in the United States. In general we may say that the functions of the police in the United States fall into four different classes: (1) to detect and arrest criminals; (2) to protect the innocent; (3) to prevent crime; (4) to perform certain welfare tasks for society. As in England, so in the United States, the policeman has very few rights beyond those possessed by any citizen. In making arrest he is governed by practically the same rules of the common law as govern the ordinary citizen. If a felony has been committed and if he had reasonable grounds to believe that the man he arrests committed the act, he has the right to make an arrest without a warrant. If, however, the act is a misdemeanor, he has no right to arrest without a warrant, unless he witnessed the occurrence.¹⁰ If he arrests a person illegally, he can be prosecuted for false arrest as can any other citizen.

While the detection of crime belongs to the special branch of the police known as the Detective Bureau, the ordinary policeman must know what

⁸ *Ibid.*, p. 48.

⁹ *Ibid.*, pp. 46-57.

¹⁰ Woods, *Policemen and Public* (New Haven, 1919), p. 34; Fosdick, *European Police Systems*, p. 15.

kinds of evidence are important so that they may be preserved, and often he has to act the part of a detective himself. The policeman has no more right before a jury than any other citizen and is subject to the same cross-examination as any one else. He must, therefore, know what kind of evidence is admissible under the law if he expects to convict the accused.

The duty of the policeman is also to protect the innocent as well as arrest the guilty. Often, however, owing to criticism of the police for failing to find the authors of sensational crimes the duty of the police to protect the innocent is forgotten in their zeal to catch the guilty.

Again, it is an important duty of the police to prevent crime. The policeman walks his beat, because criminals are not likely to commit a crime when he is present. The efficiency of the police prevents crime by making a city so uncomfortable for professional criminals that they stay elsewhere.¹¹

Again, the policeman can prevent crime by educating the public against leaving doors unlocked, urging them to take care in hiring servants, and other measures that will prevent the commission of crime in the homes of the people.¹²

The police can also prevent crime by the proper treatment of discharged convicts. If they know thoroughly the nature of the men, they will know which can be trusted and helped and which they will have to watch. Colonel Woods says that the emotional type of prisoner must be watched more closely, since he seems to repeat his crime more easily than the man of hard sense. In our best police systems the policeman is actually helping many of the ex-convicts to go straight.¹³

Again, a function of the police is to take certain steps to secure the safety, security, and welfare of the people. Traffic regulation is one of these measures; others are keeping crowds in order in public places and looking after sanitary regulations, fire prevention, dangerous places in the streets, and so forth. In these ways the policeman is a kind of people's guardian.¹⁴

THE INEFFICIENCY OF THE POLICE

Discuss the police with almost any one and you meet with criticism. They are charged with being lazybones, ignoramuses, grafters, friends of criminals, themselves violators of the law they are supposed to enforce, and tyrants who persecute the innocent, hound discharged convicts, interfere with personal liberties, and so on. The state of public opinion is such that they can be charged with almost anything and many will believe it.

¹¹ Woods, *Crime Prevention* (Princeton, N. J., 1918), p. 23. The estimate of the New York police inspectors as to the effect of their efforts on the diminution of crime varied from 1 per cent to 50 per cent.

¹² *Ibid.*, pp. 38-48.

¹³ *Ibid.*, pp. 91-97.

¹⁴ Woods, *Policeman and Public*, Ch. 3.

Many of these charges against the policeman are not well founded; some are well founded, but for them the policeman is not to blame; other charges are well founded but are natural errors on the part of men poorly trained and mistaken in their zeal to make a record; still others are only too true and deserve very careful consideration.

In addition there are other difficulties, which make it very hard for the policeman to live up to his oath and at the same time not break the law. For example, he is faced with the obligation to enforce all the laws, to respect the liberty of each individual, to presume that every person is innocent until found guilty unless he has caught him in the act of committing a crime, and yet is sure to be frowned on by the public if he does not catch the offender and protect the public. In most states the law does not allow the policeman to arrest upon suspicion; yet if he does not do so, in some cases the criminal will escape and the public will not be protected. He has no legal authority to chase suspects out of town, and yet public sentiment will approve such procedure if thereby the community can be rid of some suspicious character. Legally he has no right to stop a man who is carrying a bundle that he may plainly see contains silverware or other valuable objects, unless he knows that a crime has been committed. Yet if a policeman saw such a man in the early hours of the morning sneaking through a back alley, and did not stop him to find out what he was doing, he would be "roasted" in the newspapers the next day.

Furthermore, under the presumption of innocence in both England and this country, the policeman is supposed to warn any man whom he has taken into custody that anything he may say may be used against him at his trial, and he is not supposed to quiz his prisoner or to use any severe measures to induce him to make a confession. The law presumes that the policeman will advise his prisoner's friends or family that he has been arrested and allow him to secure counsel at once. As a matter of fact, however, the policeman knows that unless he secures a statement from the guilty man soon after his arrest, he will probably be unable to get the very best evidence needed for the conviction of the criminal. This gives rise to the infamous "third degree."¹⁵

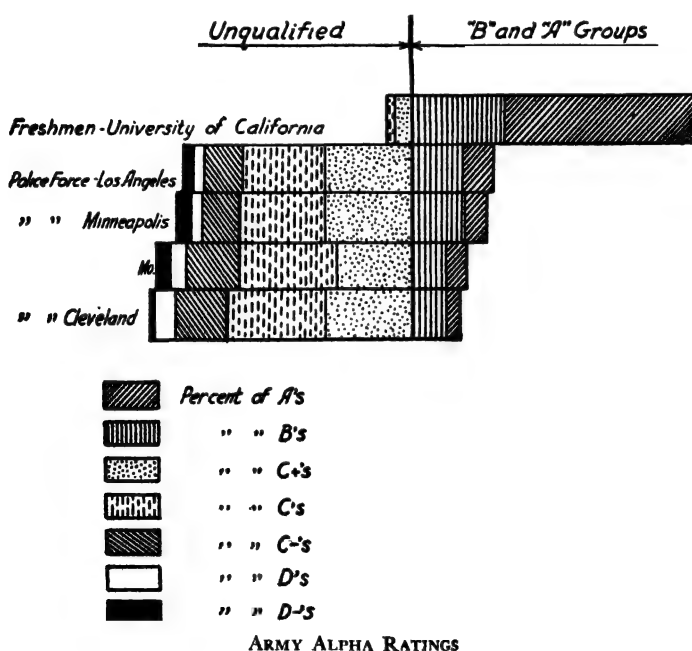
The remarkable lack of intellectual fitness among the police as revealed by the Alpha Army test is shown by the following table comparing the Freshmen of the University of California with the policemen of four of our large cities.¹⁶

¹⁵ See Hopkins, *Our Lawless Police* (New York, 1931), Chs. I-IV, XIII, XVI. For a statement of the public attitudes that make police ineffective see Smith, "Enforcement of the Criminal Law," *Annals, American Academy of Political and Social Science*, Sept., 1941, pp. 12-18. On the difficulties of testing police efficiency see Parratt, "How Effective Is a Police Department?" *Annals of the American Academy of Political and Social Science*, Sept., 1938, pp. 153-164.

¹⁶ For table and graph see National Commission on Law Observance and Enforcement, No. 14, *Report on Police* (Washington, D. C., June 26, 1931), p. 60.

Group	Number of Men	A (Per Cent)	B (Per Cent)	C (Per Cent)	C (Per Cent)	C (Per Cent)	D (Per Cent)	D (Per Cent)
Freshmen, University of California	1,760	60	31	7	2	0	0	0
Los Angeles Police Department	1,712	9	18	29	28	12	2	2
Minneapolis Police Department	473	7	19	29	27	11	3	4
Kansas City Police Department	623	5	13	24	33	15	6	4
Cleveland Police Department .....	....	4	13	28	33	15	6	1

Note that, while 60 per cent of the Freshmen had "A" rating and 31 per cent "B" rating, 91 per cent being intellectually fit, only 27 per cent of the Los Angeles Department, 26 per cent of the Minneapolis Department, 18 per cent of the Kansas City Department, and 17 per cent of the Cleveland Department were fit. The graph will make this clear. If the standard established by the Los Angeles Civil Service Commission for



Policemen were to be taken as that for police systems of this country, over 75 per cent of the members of the police of this country are not mentally endowed to perform the duties assigned.¹⁷

If the police are unskilled, ignorant, appointed for political reasons,

¹⁷ *Ibid.*, p. 61.

more interested in retaining their jobs than in protecting the public, many of them ready to accept graft for the protection of illegal practices, are the police entirely to blame? Is it not rather the miserable salaries paid them, which tempt them to "graft," the public indifference shown in the selection and training of men who guard our property and protect our persons, the public apathy to the technical measures necessary to secure a good police force? Contrast the American and the European attitude toward the police force—indifference and criticism on the one hand and interest and pride on the other. Or compare the apologetic and defensive attitude of American police with the self-respect of European forces. Here again the community is itself to blame, for what attention have we given the subject, except to criticize? ¹⁸

The police are blamed for their failure to catch criminals. Certainly, when compared with the European police, our police make a poor showing.

On the other hand, it has been charged that the police in certain of our cities cause needless arrests. The Merriam Crime Commission of Chicago called attention to this matter in 1914. Again in 1922 Abbott tellingly referred to the matter. She gave the following list of arrests to show how needless many of them were: ¹⁹

"Picked up 4 P.M., discharged army three weeks ago"; "just came from Bridewell, discharged"; "sitting in vacant flat, discharged"; "no home, discharged"; "on the street 11:30 P.M., \$25 and costs (House of Correction)"; "walked around Chicago all night. Belongs to 7th Regiment, discharged"; "pool room raid, discharged"; "loafing in depot, discharged"; "standing on corner 5:30 A.M., discharged"; "sleeping on roof of building at 1 A.M., discharged"; "on railway property, had fight with officer, discharged"; "on street 12:50 A.M., discharged"; "said 'was picked up because of past arrests'"; "vagrancy, discharged"; "bumming, discharged"; "gang fight, discharged (ran away from Lincoln)"; "out of work 1 month, probation 6 months"; "smoking cigarette in the park, discharged"; "in a restaurant 6:30 A.M., discharged"; "just out of the House of Correction, discharged"; "picked up on suspicion, discharged"; "picked up at 2 A.M., discharged"; "'goofing' on the corner, discharged"; "climbing of 'L' road to get a free ride, discharged"; "on street at 3 P.M., discharged"; "picked up going to work 8:30 A.M., discharged"; "picked up at 10:30 A.M., discharged"; "sleeping in a barn, probation 6 months"; "in an alley between 12 and 1 A.M. Fined \$10 and costs"; "standing on a corner, discharged"; "picked up standing in front of a restaurant, discharged"; "on street at 9 A.M., discharged"; "on street at 5:30 A.M., 'going to work,' discharged"; "robbery, C. C., \$2,500. Beaten up by policeman. His eye almost knocked out and wrist broken. Pontiac."

If the police are making unnecessary arrests, they are not only wasting their time, but they are also causing disgrace, humiliation, waste of time and of money to innocent people. This begets a feeling of injustice and makes for criminality instead of preventing it.

¹⁸ Woods, *Policemen and Public* (New Haven, Conn., 1919), Ch. 1; Train, *Courts, Criminals and the Camorra*, Ch. 1.

¹⁹ *Journal of Criminal Law and Criminology*, Nov., 1922, pp. 338-339.

That policemen often neglect their duties while on post is evidenced by almost every recent survey of police conditions. Says Fosdick, who made the Cleveland survey, "It was not at all uncommon to find two policemen talking together while on post duty, and carrying on long conversations with citizens while on post seems to be a habit."²⁰

Often these conditions in the police department are due to poor discipline. Whatever the cause, the fact that patrolmen get drunk, neglect duty, sleep on post, engage in gambling, use indecent language, and neglect their duties means an inefficient police force.²¹

In some cities the detective bureau of the police force is a joke. Fosdick gives the following detective office records in Cleveland:

1. Detective Cowles and I have investigated this complaint; we were unable to locate the men suspected on same.
2. Detective Cowles and I investigated this complaint; we were unable to learn anything on same.
3. Detective Cowles and I investigated this complaint; were unable to get any trace of the thief or property.

Reports of this type could be instanced almost indefinitely. In many cases they seem to show that the detectives merely verified the fact that a crime had been committed, and beyond asking a question or two of the neighbors, made no attempt to solve the mystery. Under such circumstances the wonder is not that crimes occur in Cleveland but that any perpetrators are ever arrested.²²

Bruce Smith attributes the inefficiency of our police forces in part to their chaotic, uncoördinated organization. There are 40,000 distinct and separate police agencies in this country. Some of these, including most sheriff's offices, are on a fee system, with untrained, ill-equipped, unsupervised officers, and many of them are antagonistic to, instead of coöperative with, each other. He cites the fact that within fifteen miles of Boston there are forty independent police units; and 350 within 50 miles of Chicago. There are forty separate federal agencies.

The occupational backgrounds of the constables in Pennsylvania ranged from housewife to racketeer, and a study of 112 police officers in New Jersey showed forty-three different job classifications. Of these, twenty-two were "retired," and five were truck drivers. Whether these are representative of the country or not we do not know.²³

We should not, however, be unmindful of the progress that has come in the last few years in many police systems of the country. There are trends toward increased salaries, professionalization, the use of modern scientific methods in crime detection, improved equipment, and training courses for police officers, as well as toward unified command, and seeking police executives from whatever part of the country they can be

²⁰ *Criminal Justice in Cleveland* (Cleveland, 1922), pp. 45-46.

²¹ *Ibid.*, pp. 47-48.

²² *Ibid.*, pp. 69-70. For police conditions in Chicago in the second decade of the century see "The Chicago Police Report—Report of the Chicago Civil Service Commission," *Journal of Criminal Law and Criminology*, May, 1912, pp. 62-84.

²³ Smith, *Police Systems in the United States* (New York, 1940).

found, thus ignoring the age-old tendency to pick executives from the locality, or at least from the state.

OUTLINE OF AN EFFECTIVE POLICE SYSTEM

Let us briefly consider what elements are necessary in a police system in order to make it effective for the purposes for which it is designed. No matter what the scheme, unless it is manned by people who are vitally interested and intelligent as to what is required and how to get it, it will fail.

Selection of Policemen. The very first requisite of a good police system is that the right kind of material be recruited for the department. Originally in the United States men were appointed to the police force through the "influence" of some "boss" or "ward heeler." But with the development of civil service the attempt has been made to apply its principles to the selection of policemen. In 1920 of the sixty-three cities in the United States with a population of 100,000 or over, only ten had no civil service system whatsoever. Thus over five-sixths of our cities of this size had adopted civil service to correct the evils of the old system. Since that date the percentage having civil service has increased.²⁴

While the police forces that have been selected by civil service are better administered and better managed than those in which no such system has been adopted, Fosdick is of the opinion that as the civil service has been applied, it has not solved all the problems. Unless it is very materially modified, it cannot be used to select men for promotion or as the basis of discipline. It often serves as a bulwark for neglect and incompetence and prevents the "firing" of men who are of no service to the force. He concludes, "If, therefore, civil service could be looked upon as machinery for furnishing raw material, and if the police executive had the unchallenged right to reject, after probation, any candidates who proved unsatisfactory there would be little in this phase of activity which could interfere with the principle of responsible leadership."²⁵

With civil service as a bulwark against the appointment of incompetent people through political influence, positive measures to ensure efficient selection are necessary. What progress has been made in devising tests of fitness for the force? It is sufficient to note that wide-awake police heads, like Vollmer, former chief of police of Berkeley, Cal., have summoned to their aid psychology, the Army Test, and other means to aid them in selecting men with qualifications both of nature and of training for this important position.²⁶

²⁴ Fosdick, *American Police Systems*, Vollmer, "Police Progress in the Last Twenty-five Years," *Journal of Criminal Law and Criminology* May-June, 1933, p. 161.

²⁵ Fosdick, *American Police System*, p. 270.

²⁶ Vollmer, "A Practical Method for Selecting Policemen," *Journal of Criminal Law and Criminology*, Feb., 1921, p. 571; Martin, "An Aptitude Test for Policemen," *Journal of Criminal and Criminology*, Nov., 1921, p. 376 ff. National Commission on Law Observance and Enforcement, No. 14, *op. cit.*, Ch. III.

Police Schools. No less important than the selection of the right men for the police force is their training. Until very recently the only training policemen received was what they got after their induction into the service by suggestions from their superiors and by their conversation with older men on the force. Recently, however, it has come to be recognized that even the best endowed by nature may be improved by training.

Europe has had training schools for the police since 1883, when the first one was established in Paris. By 1914 there was no important European city that did not provide some kind of school for its police recruits.²⁷

In the United States the development of training schools came later. A study by the National Committee on Law Observance and Enforcement published in 1931 showed that of a total of 383 cities about 20 per cent had some method of school training. Out of these seventy-eight, only fifteen gave courses that could be considered to qualify the recruit for efficient work. Berkeley, Cal., had perhaps the most complete training school for police. It differed most fundamentally from the others in that the greatest emphasis was placed not upon the mechanics of the policemen's duties but upon a knowledge of the fundamentals of human psychology and psychiatry. It is an evening school, meeting three nights a week for two hours in a course covering two years.

The movement is growing, however, to provide training for policemen on either a state-supported and controlled system of police schools or with university coöperation. A number of the states have started such schools.²⁸ There is no reason why our state universities should not coöperate with the city police departments to provide for those who are thinking of entering the police service a thorough training in police methods and procedure.²⁹

More recently the FBI of the federal government has been providing a police school for picked officers from city police systems. These men often when they return home set up and direct police training schools for their own forces. This has a very decided effect up on the efficiency of police systems over the country. Nevertheless Bruce Smith in 1943 said that despite unanimous lip-service only a small proportion of the police recruits receive really adequate training for their duties.³⁰

Equipment. If a police force is to do its full duty by the community it must have proper equipment. This fact has not been recognized as generally as it should be, even by the police officials themselves.

²⁷ Fosdick, *European Police Systems*, pp. 211-212.

²⁸ National Commission on Law Observance and Enforcement, No. 14, *op. cit.*, Ch. IV.

²⁹ In addition to the two books by Fosdick see also Fuld, *Police Administration*, and the following articles: Ottolenghi, "The Scientific Police," *Journal of Criminal Law and Criminology*, Mar., 1913, p. 876; Gault, "On the School for Police," *ibid.*, Jan., 1917, p. 644; Vollmer and Schneider, "The School for Police as Planned at Berkeley," *ibid.*, Mar., 1917, p. 877.

³⁰ *Journal of Criminal Law and Criminology*, July-Aug., 1943, p. 133.

From time immemorial the patrolman has *walked* his beat. An effective police system should *motorize its patrol*. That does not mean, of course, that every man should travel on wheels, but our best police systems in the United States have motorized the force sufficiently to enable men to cover their beats much more rapidly and therefore more frequently than is possible by walking. Since the automobile has come in, criminals no longer walk; therefore a patrolman without an automobile or motorcycle has little chance to catch them. Moreover, with the increasing area of residential sections and the growth in the size of cities, it is necessary either that a very much larger force be employed or that transportation be provided for the policemen.³¹

An up-to-date *police signal system* is necessary if the force is to be used most effectively. Several of our best police systems by installing modern methods of notifying police of crime and communicating with patrolmen on the beat have shown the efficiency of scientific methods of battling the criminal. The experience of Detroit with police radio shows what can be done. In 1929 the Detroit Police headquarters sent out 22,598 broadcasts, which resulted in 1,325 arrests in an average time of one minute and forty-two seconds. Chief Rutledge said:³²

Murderers have been caught at the scene of the crime before they had a chance to dispose of their weapons. Burglars have been captured while still piling up their loot in homes. Bewildered auto thieves have gasped as the police cruiser roared alongside of them a few moments after they had stolen a car. Speeding hit-run drivers have been captured and returned to the spot where they had run down and left their hapless victim a few seconds before. Thugs have been captured while in the act of robbing their victim. Racketeers and bad-check passers have been caught. Bank stick-up men have been in handcuffs within 60 seconds of the time they fled from the bank. . . .

Snaring criminals in a radio network woven by broadcasting to radio-equipped pursuit cars has become a matter of seconds. Seconds are precious to the law-breakers. They spell the difference between escape and capture. The wider his margin of time the better his chances to escape apprehension. By the use of radio we are catching the criminal red-handed. We are eliminating the introduction of circumstantial evidence in trials by indisputable proof of guilt. Economically, we are cutting down the cost of law enforcement by catching the crook with the goods on instead of getting him after a long chase. We have quickened and lengthened the arms of the law. We have synchronized the arrest with the depredation; instead of trailing behind in the criminal's dust, we are as near abreast of him as it is humanly possible to be.

An increasing number of states are installing state radio stations to broadcast details of crimes and criminals in order that police officials may be on the alert. In those states that do not have state police systems many cities have set up radio stations to inform neighboring cities to be on the lookout for criminals who have committed depredations within

³¹ Fosdick, *American Police Systems*, pp. 306-307.

³² National Commission on Law Observance and Enforcement, No. 14, *op. cit.*, pp. 96, 97.

their borders. In 1931 nearly half of the states had bureaus of identification, which centralized police records.

Most of the police systems in this country are not adequately equipped either with cars or with signal apparatus or with radio equipment.³³

If the police are to succeed in discovering criminals, they must also be equipped with their own or have available a state laboratory. In these all kinds of examinations can be made to assist the detectives. The microscope can be used to examine letters and documents of all kinds; chemical analyses can be made of smears found in connection with crimes; hair and blood often must be examined; and in many other ways a laboratory is of the greatest value.³⁴

A psychological laboratory may be used in the examination of applicants for the police force and in examining arrests who are suspected of being psychopathic and thus assist not only the police but the court when the case comes to trial.³⁵ Even a small police system like that of Berkeley, Cal., has found the psychopathic laboratory of great value. For the sake of the smaller police systems such laboratories should be provided by the state in a bureau of criminal investigation and identification.

Another piece of equipment necessary in these days for effective police work is an *identification bureau* consisting of files of cards recording various identification marks. The criminal record file is of the utmost importance for identification purposes. It is of supreme importance with reference to habitual criminals. For twelve years in England and Wales from 60 to 70 per cent of convicted persons have been recognized through this file as having had previous convictions.³⁶

Two general systems of identification have been widely accepted in Europe and in the United States: the fingerprint and the physical measurement or Bertillon method. Bertillon in 1883 was made head of the Paris Police Department and introduced anthropometrical measurements for purposes of identification. This was adopted in most of the countries of Europe, and later as the police of different cities in the United States learned about it, it was put into effect here. In 1901 the fingerprint method, which had been used in China ages ago and was first tried by English authorities in India, was adopted at Scotland Yard, London. Sir Edward Henry, then head of Scotland Yard, invented a method of classifying fingerprint impressions. The Henry System is the most widely used, being employed in most of the European countries except Italy. The other system of classifying fingerprints was invented

³³ *Ibid.*, Ch. V; Gault, "A Progressive Police System in Berkeley, California," *Journal of Criminal Law and Criminology*, Nov., 1918, pp. 320, 321.

³⁴ *Ibid.* pp. 320 321.

³⁵ *Journal of Criminal Law and Criminology*, Mar., 1913, p. 876; May, 1916, pp. 32, 79; Nov., 1918, pp. 319, 320; Aug., 1920, p. 215; Aug., 1922, p. 255. Very little has appeared on the subject in recent years.

³⁶ Fosdick, *European Police Systems*, p. 317.

by Vucetich and is called "the Argentine System." It is most widely used in South America. Modifications of it are used in Madrid and Copenhagen. Both of these systems are based upon the fact that while no two fingerprints have been found absolutely identical, all the millions so far taken can be classified under four or five main types with subdivisions so arranged that any fingerprint can be found in a large file in a very few minutes. Fingerprinting as a method of identification is fast supplanting the more complicated and less accurate Bertillon measurements. Its superiority is indicated by the fact that in England and Wales in 1911 the number of identifications made by the fingerprint system was twenty times larger than the greatest number identified in any previous year by the Bertillon system.³⁷

In many of the cities of the United States both the Bertillon and the fingerprint systems are being used to some extent. Probably the time will come when the more efficient one will crowd out the other entirely. In many of our smaller cities no attempt is made to establish an identification bureau.³⁸

In addition to these two methods of identification another method known as the *Modus Operandi* system was devised by Major Atcherley in Yorkshire, England, some years ago.³⁹ This system is one that classifies crimes by method of commission. Operating through a clearing-house covering a wide territory, it is intended to help in the identification of criminals by a file describing how each crime within a given district is committed and thus so far as possible ascertaining who committed it. The system is based upon the theory that each professional criminal has a method of working. It suggests who may have been the author of a crime when nothing but the way in which it was committed is known. It is bound to be more widely employed as time goes on.

Increasingly in recent years the city police systems and the penal and correctional institutions have been using the Federal Bureau of Identification at Washington. While no city police system has to send its fingerprints to the FBI, an increasing number are doing so for identification.

So valuable has the Bureau of Investigation and Identification become that an increasing number of states have set up such bureaus of their own. The most complete is probably that in the state of California at Sacramento. While this bureau cost \$40,000 a year in 1927 and 1928

³⁷ Fosdick, *European Police Systems*, Ch. 9.

³⁸ Fosdick, *American Police Systems*, pp. 348-353.

³⁹ Fosdick, *European Police Systems*, pp. 344-349; *American Police Systems*, p. 352; Vollmer, "The Bureau of Criminal Records," *Journal of Criminal Law and Criminology*, Aug., 1920, pp. 171-180; Fosdick, "The Modus Operandi System in the Detection of Criminals," *Journal of Criminal Law and Criminology*, Nov., 1915, pp. 560-570; Vollmer, "The California State Bureau of Criminal Identification and Investigation," *Journal of Criminal Law and Criminology*, Feb., 1919, pp. 479-482; Fosdick, "The Passing of the Bertillon System of Identification," *Journal of Criminal Law and Criminology*, Sept., 1915, pp. 363-369; Vollmer, "Revision of the Atcherley Modus Operandi System," *Journal of Criminal Law and Criminology*, Aug., 1919, pp. 229-274.

its cost was recovered sixfold through recovery of stolen property alone. Of 98,535 fingerprint records of persons arrested received by the bureau for classification and comparison, 42,667 were identified and verified as being those of habitual law offenders, thus saving additional thousands of dollars in the expense incidental to jury trials made unnecessary by confessions obtained. The *modus operandi* identification method is also used, 132,685 reports having been received, analyzed, and filed by the bureau according to the method used in committing the crime. In many of these cases it was able to identify the perpetrators and again save expense and hasten the incarceration of the criminal. Forgers and fraudulent check operators to the number of 3,296 were identified and verified by the hand-writing and laboratory section of that bureau. From the habitual offenders identified 970 were either escapes, parole violators, or fugitives from justice, many of them having escaped from penal institutions outside the State.⁴⁰ If all the states had adequate state bureaus, with intercommunication between them, and with ready communication with the National Bureau of Investigation and Identification, it would aid in the capture and incarceration of many habitual criminals who now escape.

CRIME PREVENTION

Fosdick thought that of even greater importance than the other functions of the police, which we have discussed, are those of prevention. He called the preventive efforts of the police the third great line of social defense.⁴¹

The police may prevent crime by attacking such special problems as vice, gambling, the formation of gangs of young criminals, the use of narcotics, need in times of unemployment, and other conditions of a crime-producing nature. Police have learned that it is easier to prevent crime than to cure it, to root out conditions that produce criminals than to catch them after they are made. Commissioner Arthur Woods of New York City pointed out the importance of prevention and organized special *squads of preventive policemen* or, as he called them, "crime prevention patrolmen." The duty of these officers was to ferret out the conditions in the city that were a menace to young boys and girls and to make endeavors to correct them. The crime prevention work of the New York Police Department with boys and girls for a time was one of its proud features.⁴² Bruce Smith, however, in his recent book, referred to above, thinks that crime prevention bureaus attached to police departments are of very little value because we have no accurate knowledge of what causes crime.

⁴⁰ National Commission on Law Observance and Enforcement, No. 14, *op. cit.*, pp. 134-135.

⁴¹ Fosdick, *American Police Systems*, p. 269.

⁴² *Spring 3100*, "house organ" of the New York Police Department, July, 1933, p. 4.

Another important measure recently introduced into a good many police departments is the *policewoman*. While occasionally it is her business to arrest people, her chief business is to prevent delinquency on the part of women and girls. While she is too new in the police department completely to have found her place in the organization, she serves a very useful purpose in connection with arrested women.⁴³

Policemen and Children. The patrolman on the beat can do much to prevent delinquency in children. He becomes acquainted with the stupid, defective child, with the bright, erratic boy likely to get into trouble; he knows something of the homes from which they come and the street conditions in the midst of which they live. He knows when there is a gang of bad boys terrorizing the neighborhood in which he lives or works. He sees the first evidence of delinquency in many of these children. Vollmer has suggested that the policeman should ascertain from all the agencies and sources available the facts concerning these delinquent children and anything that will throw light upon the causes. He should ascertain from teachers and attendance officers the names of those who are giving trouble. He even suggests that these children should be mapped upon his precinct so he will know where they live and toward what kind of delinquency they are tending. He can then coöperate with the various preventive agencies in the community to take charge of these children and use such measures as he cannot himself supply to correct their evil tendencies.⁴⁴

Furthermore, Commissioner Woods of New York City during his term of office threw the influence of his department behind the development of city playgrounds in order to reduce juvenile delinquency. He made arrangements with the school-teachers to assign policemen in uniform to talk with the children in schools. In New York in 1915, and later in other cities, the plan was devised of having Christmas parties for the children in the precinct station houses. Over 40,000 children who otherwise would not have had a Christmas party were entertained in the station houses of New York City in this fashion during the Christmas season of 1916. The consequence was a revolution in the attitude of the children toward the policemen. Under Commissioner Woods "welfare officers," as they were called, were appointed by him, one assigned to each

⁴³ Fosdick, *American Police Systems*, pp. 376-377; Hamilton, *The Police Woman, Her Service and Ideals* (New York, 1924); "Women Police Service in England," *The Survey*, Sept. 1, 1917, pp. 490-491; *Literary Digest*, Mar. 15, 1924, p. 56; Potter, "Delinquency and Corrections," Part I, *Topeka Improvement Survey*, May, 1914, p. 21. Other articles of interest and quite easily available are the following: Van Winkle, "The Police Woman," *The Survey*, Sept. 15, 1924, p. 629; "Rapid Recruiting of Policewomen," *The Survey*, Dec. 13, 1913; "Policewomen in Chicago," *Literary Digest*, Aug. 28, 1913, p. 271; Additon, "The Functions of Policewomen," *Journal of Social Hygiene*, June, 1924, p. 321. See also Owings, *Women Police* (New York, 1925), Chs. V-X.

⁴⁴ Vollmer, "Pre-Delinquency," *Journal of Criminal Law and Criminology*, Aug., 1923, p. 279. See also Cantor, "Organized Efforts in Crime Prevention," *Annals, American Academy of Political and Social Science*, Sept., 1941, pp. 159, 160.

precinct, whose business it was to look after the welfare of boys and girls who seemed to be going wrong. In 1918 in Chicago the police investigated 19,019 cases of delinquency and complaints concerning children. This work was done by thirty-nine patrolmen assigned to juvenile work at various precinct station houses. Of these complaints 85 per cent were adjusted out of court, while delinquency petitions had to be filed only in the remaining 15 per cent. Since 1882 a juvenile delinquency division has been organized in the police department of Detroit.

In order that the policeman may do this type of work successfully, he must be trained in social service. He cannot shut himself off from the other welfare agencies of the community; he must know what they are doing, why they are doing it, and how to coöperate with them. But there is the rub; the police are not so trained. In some cities juvenile police have been organized among the children.⁴⁵

Coöperation of Citizens with the Police. Both for ordinary work and for police protection it is necessary that the citizens of the community coöperate with the police in the conflict with crime. Unless that is done, the police cannot handle the problem by themselves.⁴⁶

State Police. What has thus far been said pertains chiefly to well-organized police departments in large cities. In these days of the rapidly traveling automobile and the consequent ubiquity of criminals some states have felt it necessary to supplement the services of the rural constable by a state police.

A legislative committee in New York State studied the efficiency of the rural constables in that state and came to the conclusion that they were almost useless to combat the crime that has appeared in rural districts in the last few years owing to the change in method of transportation. They recommended that the state police force of that state be increased in number so that they could handle this problem.⁴⁷

The first rural police on this continent was the Royal Northwest Mounted Police of Canada, established in the year 1872 at Kingston, Canada. In the United States early anticipation of state police forces are to be found in the Connecticut State Police Department, the Massachusetts District Police, the Texas Rangers, the South Dakota State Constabulary, and the Idaho Department of Law Enforcement, a few of which were organized as early as 1865 and 1870. Pennsylvania, however, was the first state in the United States to adopt the form of a mounted police force known as the "State Constabulary," organized in 1905. It grew out of the difficulties arising in the widely scattered mining communities of Pennsylvania that could not be handled by the local constable and

⁴⁵ Fosdick, *American Police Systems*, pp. 369-377.

⁴⁶ *Ibid.*, p. 378; Cahalane, "Citizens' Coöperation with the Police Department," *Journal of Criminal Law and Criminology*, May, 1919, p. 100 ff.

⁴⁷ Smith, "Rural Justice in New York State," *Journal of Criminal Law and Criminology*, Aug., 1924, p. 384 ff.; see also his *Rural Crime Control* (New York, 1933), and his *The State Police* (New York, 1925).

sheriff. When reorganized in 1913 it was a force of 228 officers and men divided into four troops, each having a captain, lieutenant, five sergeants, and sixty-eight privates. They were given the powers of policemen of cities of the first class throughout the state and *ex officio* were made game, fish, and forest wardens.

New York's state police was organized in 1917, Michigan's and West Virginia's in 1919, New Jersey's in 1921, Rhode Island's in 1925, and Oregon's in 1931. The years since have seen a number of other states provide a state police force. The state highway patrols, developed following the increase of motor car transportation, tend to grow into forces with general police powers. In 1933, however, Bruce Smith felt that the state forces of only eleven states were worthy of extensive consideration.⁴⁸

These state police systems have been found of great value for the protection of rural communities, but because of interference in labor troubles they have been subjected to a great deal of opposition by the labor-unions. Doubtless they are subject to the same influences as the city police systems. The cure for the evils of both is not abolition but further development and better training.

Does a Progressive Police System Pay? It may be asked whether a so-called progressive police system is worth while. What evidence is there that these new-fangled police systems get any better results than those organized under the old methods? Are they any cheaper, or, like most new-fangled things, do they cost more money?

Unfortunately we have too little statistical information as to the comparative results of the two systems. Certain facts suggest that these new methods are not mere fads but do produce better results.

The Berkeley police system was one of the earliest progressive systems in the United States. The police patrol there is mounted on automobiles for patrol work; it has an ingenious signal system; a psychopathic clinic has been established in connection with it; it has one of the most complete identification files in the country. Yet Chief Vollmer was able, while the population of the city was being trebled, to reduce the police force from thirty-two to twenty-eight, while the number of complaints of serious offenses was reduced about one half. This progress was made in spite of the fact that Berkeley is adjacent to two large cities, Oakland, with a population at the time of approximately a quarter of a million, and San Francisco with more than a half million inhabitants just across the

⁴⁸ Chandler, *The Policemen's Art* (New York, 1922); Fuld, *Police Administration* (New York, 1909), pp. 416-425; Mayo, *Justice to All* (Boston, 1920); Mayo, *Mounted Justice* (Boston, 1922); Miller, "The State Police," *Proceedings, Minnesota Academy of Social Sciences*, 1910, Vol. III, pp. 96-126. An excellent bibliography on this subject is to be found in the article by Corcoran, "State Police in the United States: A bibliography," *Journal of Criminal Law and Criminology*, Feb., 1924, p. 554. See also article by Ray, "Metropolitan and State Police," *Journal of Criminal Law and Criminology*, Nov., 1910, p. 351; *ibid.*, May, 1922, pp. 139-140; and Smith, *The State Police* (New York, 1925), Chs. I-VIII; *Rural Crime Control*, Ch. V.

Bay. With an ineffective police system Berkeley would probably have been overrun with criminals from the surrounding districts. As it was, even tramps shunned the city.⁴⁹ In addition consider the increased efficiency of detection noted in connection with the State Bureau of Investigation and Identification in California.

This survey has indicated some of the evils in connection with American police systems and the important place that a police system may occupy in the cure and prevention of crime. Bad as some of them still are, on the whole they show progress. Compared, however, with the efficiency of some of the European police departments before World War II wrecked Europe, the police systems of our American cities suffer.

If, then, Americans are finally to win in their tremendous struggle to repress professional criminals, to restore to decent citizenship the youth who has made a mistake and is trying to "beat back" to respectability after release from prison, and to prevent crime, they must give close and sustained attention to the police.⁵⁰

QUESTIONS AND EXERCISES

1. Explain the origin of the name *cop* given to police in the United States.
2. What is the historical basis for the fact that the sheriff in the United States sells property after a mortgage has been foreclosed and judgment given?
3. Explain why the term *marshal* is given to both the commander of armies and a petty police official in American communities.
4. Give six reasons for the inefficiency of the police in the United States as compared with those in Germany; in England.
5. Explain the difference between the Bertillon, the fingerprint, and the *modus operandi* systems of identification.
6. State the arguments for and against making the ordinary policeman a parole officer for released convicts.
7. What are the objections to making policemen probation officers?
8. Map out a program by which better understanding between the populace and the police may be accomplished.
9. What constitutes the essential equipment of a good police department?
10. Discuss the necessity of careful selection and adequate training of policemen.
11. Read Chapter IX of *The Illinois Crime Survey*, and tell why the coroner's office is inefficient.
12. Make a personal study of (a) the county sheriff's office; (b) the police system of your city; (c) the state police system of your state. In each case note method of selection, training required, pay, promotions, organization, and efficiency.

⁴⁹ Gault, "A Progressive Police System in Berkeley, California," *Journal of Criminal Law and Criminology*, Nov., 1918, pp. 319-322.

⁵⁰ Fosdick, *American Police Systems*, Ch. 2.

Chapter XVII

THE COURTS

The origin of the criminal court is lost in the mist of antiquity. The earliest codes of laws known to us present the picture of organized efforts to adjudicate troubles between members of the community. In the code of Hammurabi, dating from the twenty-fourth century B.C., we find the judge, the witnesses, and the elements of judicial procedure. In the earliest codes of the Bible there are judges, methods of procedure, and judicial practices that show a long previous history. Greece by the ninth century B.C. *had criminal courts*.¹

THE IMPORTANCE OF THE COURT

Whether in ancient civilizations or in communities of to-day, courts of justice play a very important part. When men attempt to live together they inevitably find it necessary to adjust their difficulties through the intervention of some third party who will be removed from the feelings that trouble always engenders.

Private vengeance is too costly to survive very long. Furthermore the organized dignity and majesty of the community, it was soon discovered, whether it originated through the exercise of royal power, through the priesthood or through the sanctity of the temple, brought to the help of the injured person a force that neither he nor his kindred unaided could exercise. To physical force was added the sanction of recognized authority, whether it were that of chief, of religion, or of conqueror. The heat of partizan passion was mollified by the deliberation and judgment of a distinterested party.

Always the important functions of the court have been (1) the redress of wrongs, (2) the conviction of the guilty, (3) the protection of the innocent, (4) the harmony of society. Members of a community are entitled to the protection of all forces in that community for the safety of their persons and the security of their property. Only so can ordered society continue to exist. When the courts fail to furnish this protection, the primary reason for their existence is gone.

In order to protect the innocent it has been found necessary to take measures against those who infringe upon the rights of others. Whatever

¹ Hastings, *Dictionary of the Bible*, Extra Vol., p. 594; Bonner and Smith, *The Administration of Justice from Homer to Aristotle* (Chicago, 1930).

our theory of penology, those guilty of what we call "crime" must be given a course of treatment, whether we call it "punishment" or not. On the creation of agencies to satisfy these sentiments of social justice depends the perpetuity of civilized institutions. So widespread is this conviction of the importance of the courts that even to-day when criticism is being heaped upon them few have ventured to suggest that they be abolished.

CRITICISMS OF THE CRIMINAL COURT

We are here concerned with the criminal, not the civil, court. What are the criticisms leveled at it and what is their value?

The charges against the court reduce to (1) undue influence, which allows the guilty to escape; (2) needless delays and other obstructions of justice due to the intricacy of our criminal procedure; (3) "the sporting theory" of judicial procedure; (4) lack of organization in our court system.

Improper Influence upon the Courts. While not all the cases that are "dismissed for lack of evidence," or "nolle prossed" or "no-papered" or acquitted after trial are so disposed of owing to political or other influences, numerous instances can be found in which prosecuting attorneys have on one pretext or another refused to bring or dismissed indictments against politicians or their friends or judges and juries have been "fixed" so that the offender has been discharged. In 1920 as part of the investigation of criminal justice in Cleveland, Ohio, a study was made of the disposition of 4,499 felony cases begun in 1919. Over an eighth of these cases were disposed of by the police. About a twelfth of them were "no-papered" or "nolled" by the Municipal Court. Over 14 per cent were discharged or dismissed, or the charges were reduced to misdemeanors, while only 64.5 per cent were bound over for trial. Of the 2,539 cases disposed of in the Common Pleas Court 1,324 or 52 per cent were handled before the defendant had to plead. Of this number over a fifth (21.1 per cent) were "nolled"; 2.2 per cent were not brought to trial; 1.3 per cent provided bail; and 1.2 per cent were dismissed. Over a fifth were declared not guilty, and only 14 per cent of this entire number were found guilty of either felony or misdemeanor. That some of those who escaped the hand of the law did so because of influence is indicated by the writers of the report in the following words:²

A study of the practical working of criminal justice should begin with some consideration of the powerful dynamic agency released through the arrest of a man upon a serious charge. The instinct of self-preservation sometimes leads a felon to commit murder in resisting arrest, and once in custody, his whole being is concentrated upon the single idea of getting out. Parents and relatives, who had apparently given him up as a lost soul, rally loyally to rescue him from the penitentiary, often pledging their last cent for the purpose. Few felons are

² *Criminal Justice in Cleveland* (Cleveland, 1922), p. 233.

so disreputable that there is no one to fight for their liberty. The friends who do not come forward willingly are forced into line by every human incentive. It is often surprising how far and into what regions this active agency can penetrate. "Beginning in the slums, among the recidivists," observed the oldest judge on the Cleveland bench, "waves of influence are set up that reach higher and higher until they envelop respectability. Men with spotless reputations, whose motives cannot be doubted, will urge a judge to parole a professional criminal."

The investigators studied the record to find how the criminal lawyers found the weak spots in the judicial system. They say:

For the purposes of these tables, criminal lawyers with political affiliations were chosen. A list of all lawyers having more than 10 cases each begun in 1919 was sent to a Cleveland lawyer thoroughly familiar with the local bar. This lawyer, without knowing the figures for any names in the list, marked the attorneys with political leanings and his judgment was accepted. The figures are not as significant as a selected list would show because the names chosen for political affiliations include several high-minded men who are not primarily criminal lawyers at all. The comparison does not necessarily throw discredit upon the lawyers selected: it does reveal a system which lends itself to manipulation.

This study gave enough instances of the working of political influence upon the machinery of justice in Cleveland to show that this indictment against the court is not without basis.

The Missouri Crime Survey, *The Illinois Crime Survey*, and others cited by the National Commission on Law Observance and Enforcement in its material cited below abundantly confirm the findings of the Cleveland study. An even more difficult problem is presented to the courts and regulatory commissions of government by the members of the more "respectable" members of society—the directors and managers of large corporations, the professional men of high standing, and their lawyers, the last of whom often seem to be hired for the express purpose of advising their clients how to evade the law and, if caught, how to beat it. These are Sutherland's so-called "white collar criminals."³

Perhaps even more insidious is the pernicious influence of parties and groups upon the judiciary where judges are elected by popular vote. The writers of the report on *Criminal Justice in Cleveland* assert that the judges of Cleveland were not above appealing to race and religious feeling, having their eyes upon the labor organizations and other influential groups in the city. In a large cosmopolitan city like Cleveland judges elected by popular vote find it difficult to forget the coming election when a case comes before them that involves religious, political, or group interest.⁴

³ *Ibid.*, p. 244. National Commission on Law Observance and Enforcement, No. 4, *Report on Prosecution* (Washington, D. C., April 22, 1931), pp. 19-22, 186-221. The statistical material in the last page reference summarizes the findings of numerous surveys, hence no detailed reference to them. See also Moley, *Politics and Criminal Prosecution* (New York, 1929), Ch. IV; Sutherland, "Crime and Business," *Annals, American Academy of Political and Social Science*, Sept., 1941, pp. 112-118; Ploscowe, "Crime in a Competitive Society," *ibid.*, pp. 105-111.

⁴ *Criminal Justice in Cleveland*, pp. 263-265.

Unnecessary Delays and Obstructions in Judicial Accusation. Court methods and forms rooted deep in the past are responsible for many unnecessary delays and miscarriages of justice. Here, precedents and the prestige of the time-hallowed resist attempts to make the procedure of criminal courts rational and effective.

Early in the history of judicial procedure the grand jury was invented as a safeguard against tyranny. No man could be tried unless an indictment strictly specifying the crime with which he was charged was presented to the court in order to provide the defense with a knowledge of the details of the accusation. In the course of centuries the terms of (1) *the indictment* have become so encrusted with legal verbiage that often it is impossible so to state the indictment that on appeal the verdict will not be reversed. Says Justice Barnes:⁵

The nice accuracy of common law indictments partly grew out of the necessity of safeguarding the liberty of the individual in a period when it was endangered by the exercise of tyrannical power, and its requirements have induced resort to technicalities along the whole line of procedure until our criminal practice has become encrusted with precedents that now present obstacles to prosecution rather than protection to the accused. Refuge in mere technicality would be largely abandoned under simpler forms of pleading and a procedure adapted to the practical ends for which it primarily exists. No sound reason can be advanced for adherence to an antiquated system that has too long served to convert a process designed for ascertaining the fact of guilt or innocence into a game of wit and subtle learning. In its maze of forms the ultimate object is frequently lost sight of. When forms are not essential to conserve rights and to secure a full and fair hearing, they render no service to the cause of either liberty or justice.

Consider the following copy of an indictment used in a Middle Western state some years ago: ⁶

The state of —, W County — ss.: In the court of common pleas, W County, —, of the term of October, in the year of our Lord one thousand nine hundred and —. The jurors of the grand jury of the County of W and state of —, then and there duly impaneled, sworn, and charged to inquire of and present all offenses whatever committed within the limits of said county, on their said oaths, in the name and by the authority of the state of —, do find and present that J. F. G., late of said county, on the sixth day of August in the year of our Lord one thousand nine hundred and —, at the County of W aforesaid, in and upon one P. S., alias F. M., then and there being, did unlawfully, purposely and of deliberate and premeditated malice make an assault, in a menacing manner, with intent, him, the said F. M., unlawfully, purposely, and of deliberate and premeditated malice, to kill and murder; and that the said J. F. G., a certain pistol then and there charged with gunpowder and leaden bullets, which said pistol he, the said J. F. G., then and there in his right-hand had and held, there and then, unlawfully, purposely, and of deliberate and premeditated malice, did discharge and shoot off to, against and upon the said F. M., with the intent aforesaid, and that the said J. F. G., with the leaden bullets aforesaid, out of the pistol aforesaid, by the force of the gunpowder aforesaid, by the said J. F. G., then and there

⁵ Barnes, "Causes of Delay in Criminal Cases," *Journal of Criminal Law and Criminology*, Sept., 1916, pp. 332-333.

⁶ *Journal of Criminal Law and Criminology*, Mar., 1911, pp. 858-859.

discharged and shot off as aforesaid, him, the said F. M., in and upon the upper right side of the back of him, the said F. M., then and there, unlawfully, purposely and of deliberate and premeditated malice did strike, penetrate and wound, with the intent aforesaid, so as aforesaid discharged, and shot out of the pistol aforesaid, by the said J. F. G., in and upon the upper right side of the back of him, the said F. M., one mortal wound of the depth of four inches, and of the breadth of half an inch, of which mortal wound he, the said F. M., then and there died; and so the jurors aforesaid, upon their oaths and affirmations aforesaid, do say that the said J. F. G., him, the said F. M., in the manner and by the means aforesaid, unlawfully, purposely, and of deliberate and premeditated malice, did kill and murder contrary to the statutes in such cases made and provided, and against the peace and dignity of the state of —.

It will be observed that in this indictment the names of the defendant and his victim are each repeated nine times, the phrase *in and upon* four times, the phrase *then and there* five times, the phrase *unlawfully, purposely, and of premeditated malice* five times and the words *said* and *aforesaid* twenty-five times. Compare now the following form of indictment, which Dean Lawson says would have been used in England:⁷

County of —. The jurors of our Lord the King upon their oath present that J. F. G., on the sixth day of August, 1908, feloniously, willfully and of his malice aforethought, did kill and murder one F. M., against the peace of our Lord the King, his Crown and dignity.

What are the results on the progress of a trial of this complicated wording of the indictment, every statement of which must be proved in the trial if the decision, in case it goes against the defendant, is not to be reversed in the court of appeal? An instance from Ohio answers this question:⁸

The defendant in this case had been sentenced to the penitentiary for a term of fifteen years, and the judgment of the trial court had been affirmed by the Circuit Court. The indictment charged the defendant with the murder of one Percy Stuckey, alias Frank McCormick. The Supreme Court, upon a writ of error, reversed the judgments of the trial court and of the Circuit Court and *discharged* the prisoner on the ground that the prosecution failed to show that the person killed was in fact Percy Stuckey, although the evidence showed that the defendant had killed some person known either by one name or the other. The omission to show that the real name of the victim was Stuckey, was, we are told, a mere oversight on the part of the prosecuting attorney, whose attention was not called to the fact during the trial. There is a provision in the Ohio penal code which provides that "a variance in the Christian or surname, or both the Christian and surname, or other description, of any person described in the indictment, shall not be deemed ground for an acquittal of the defendant," unless in the opinion of the trial court such variance goes to the merits of the case or is prejudicial to the rights of the accused. The Supreme Court of Ohio held in this case that the claim of error must be resolved in favor of the accused, that the rule of law which requires the name of the injured party, if known, to be stated, is too well settled to admit of controversy, and when stated must be proved. "In the case now before us," said the hairsplitting tribunal, "not only is

⁷ *Ibid.*, p. 859.

⁸ *Ibid.*, pp. 853-854.

there a total absence of evidence that Percy Stuckey and Frank McCormick were one and the same person, but there is not in this case from beginning to end a scintilla of evidence even tending to show or that would suggest that any such person as Percy Stuckey ever had an existence." In short, the allegation that they were one and the same person must be proved as any other essential fact. As this fact had not been denied during the course of the trial, the prosecuting attorney had not taken the trouble to produce the proof in support of an allegation the truth of which had not been drawn in question.

The all-important and essential fact which had been established, namely, that the person discharged had murdered some man, either Stuckey or McCormick, seems to have been entirely overlooked by the court in its blind adherence to technical rules of procedure. The court admits that it was unable to find any authority in the decisions of other courts of last resort for such a judicial refinement, though it found abundant support in the "reasoning" of the authorities cited in the briefs of counsel. It is refreshing at least to know that such a ruling finds no support in the decisions of other states. The truth is, if the court had fully appreciated the effect such a decision must have upon popular confidence in the administration of the criminal law, it would have pursued its investigations further. Exactly the same question has, as a matter of fact, been passed upon by the Supreme Court of Alabama in at least two cases (*Faulkner v. State*, 44 Southern Rep. 409, and *Evans v. State*, 62 Alabama 6), and in both it was held sufficient to prove that the person mentioned in the indictment was known by the alias stated therein. Honest lawyers may differ in regard to the necessity of proving that a person who is known by two or more different names is one and the same person, even when the fact is never denied, but there ought not to be any difference of opinion on the proposition that the prisoner in this case should not have been discharged. Why should not the case have been remanded for a new trial, or why should the state have been denied the right to amend the indictment so as to conform to the proof? The outcome of it all was that a convicted murderer was turned loose by the Supreme Court, not upon the merits of the case, but through a process of reasoning that sacrificed the ends of justice to mere form.

The absurdity resulting from meticulous regard for antiquated procedure based upon the accuracy of the indictment is to be found in the following Texas case: ⁹

A good example of the kind of justice it is capable of dispensing is found in the recent case of *Grantham v. State* (129 S. W. 839). The indictment in this case charged the accused with having committed burglary in a certain house occupied by six persons named therein, but the proof, although showing that the accused was guilty of burglarizing the particular house mentioned in the indictment, disclosed the fact that it was occupied by only five of the persons named. The court of appeals held that the variance between the allegation and the proof was fatal, and the judgment of the lower court was accordingly reversed. The court of appeals did not take the trouble, however, to point out in just what way any right of the accused had been abridged or denied through the trivial variance between the allegation and the proof and we confess to an utter inability to discover how the result could have been any different if all of the six persons named in the indictment had been occupants of the house instead of five only.

Evidently, in the judgment of the court, it is of more importance to society that an immaterial procedural requirement should be absolutely complied with, even to the splitting of hairs, than that a justly convicted burglar should be

⁹ *Ibid.*, July, 1911, pp. 179-180.

punished. Apparently, absolute perfection in the framing of the indictment and in the conduct of the trial is necessary to a legal conviction in Texas and no errors, however trivial, will be tolerated. All the sacred forms must be strictly observed or the results of the most carefully conducted trial will be set at naught, in spite of the most incontrovertible evidence of guilt. In most states proof that a burglarized house was occupied by one person is all that is required to identify the house. In this case the identity of the house was fully established by proof that it was occupied by five of the six persons named in the indictment, but this did not satisfy the court. To sustain a conviction the proof must show that it was occupied by all of the six. In the absence of this proof the court felt bound to conclude that no such house as that described in the indictment existed; the burglary was therefore, committed in an imaginary house, and the conviction of the burglar must be set aside.

Many other cases of the same kind might be cited; the reports are full of them.¹⁰

What are the social results of these absurdities? It has been remarked, "When notorious criminals who have been convicted by juries are discharged or granted new trials by appellate courts upon hair-splitting technicalities, when the convictions of trial courts are reversed because of the misspelling or the omission of unimportant words in indictments and criminals are given their liberty, it does not require a mind legally trained to see that something is wrong with a system which permits such delays and miscarriages of justice."¹¹ If criminals are deterred from committing crimes by the certainty and swiftness of justice, is it any wonder that we have an enormous amount of crime in this country when such things can happen? Furthermore, is it a matter for astonishment if people lose respect for courts guilty of such absurdities?

Fortunately Massachusetts some years ago followed England in providing for a simple indictment. California, Wisconsin, and a few other states have passed statutes providing that no decision shall be reversed because of a mere technical mistake in the wording of the indictment, if in the progress of the trial no error has been made that has jeopardized the defendant's right to a fair trial.¹²

In connection with the indictment should be mentioned the criticisms of (2) *the grand jury system*. Judge Gemmill of Chicago is of the opinion that "there is not the slightest doubt in the mind of the writer that one-half of the failure of our courts in suppressing crime is due to our adherence to that relic of Star Chamber days—the Grand Jury." He continues:¹³

Why should it be necessary for judges trained in the law to sit for days and listen to evidence presented at preliminary hearings both for the prosecution and the defense and then, if probable cause is found, to hold the accused to a

¹⁰ For illustrations see *ibid.*, May, 1910, pp. 76-78; Mar., 1911, pp. 852, 853, 859; July, 1911, pp. 174-179; Nov., 1913, p. 506; Sept., 1916, p. 332.

¹¹ *Ibid.*, Mar., 1911, p. 852.

¹² *Ibid.*, Mar., 1915, pp. 894-895; Aug., 1925, pp. 166-168; Feb., 1929, pp. 51-55.

¹³ *Ibid.*, July, 1912, p. 188.

body of men who know no law and have no understanding of the rules of evidence? It is hard to understand why an indictment once voted cannot be amended after the adjournment of the Grand Jury. From an instrument of justice, the Grand Jury has to-day become a convenient cover to hide the responsibility of the State's Attorney and often a convenient instrument in the hands of unscrupulous persons to punish their enemies or reward their friends.

There seems to be little reason these days why the grand jury system should be retained. It delays trial; its judgment is certainly not superior to that of a magistrate; and it is made necessary only by the fact that some state constitutions require an indictment by a grand jury. This could be easily changed so that a case could come up for trial on the basis of an information or presentment by a judge.¹⁴ Some states have preserved the grand jury to be called at the option of the judge in cases of great public clamor, like a strike or extensive corruption of public officials, when he wishes to have a large number of citizens decide whether the case warrants prosecution.

Delays Due to Antiquated Criminal Procedure. The delays due to a clumsy criminal procedure are almost wholly in favor of the accused and against the interest of the state. Such delays may be due to the grand jury system just discussed, to the form of indictment made necessary by the constitution or the statutes, to delays in the selection of the jury, to the presentation of unnecessary character witnesses, or to arguments over points of law in the conduct of the trial the only purpose of which is to lay a foundation for appeal on the basis of error by the lawyers for the defense, and frequent continuances based on traditional courtesy to attorneys. The following case shows the difficulty of an earnest prosecuting attorney's getting a decision on a case owing to respect for technicalities.¹⁵

A man named Pope in Alabama was convicted of murder by five different juries of his own selection, and each time the Supreme Court of that state reversed the case, except the last time. Think of the perseverance of that prosecuting attorney! The case was reversed twice because a witness was permitted to say that a certain shoe or foot could make a certain track. The jury were supposed to be sensible men and able to weigh such evidence, but that was not the way to do it, according to precedent way back in the dark ages, so, of course, the whole case must be reversed.

Again, much time is unnecessarily wasted in the choice of a jury. In some jurisdictions, but fortunately not in all, if a case is very important, days and sometimes weeks must be spent in a contest between opposing counsel in the selection of the jury. The purpose of this contest is to get not true and tried men impartial and intelligent enough to weigh the

¹⁴ *Ibid.*, May, 1917, p. 4. See also *ibid.*, July, 1912, p. 188; July, 1913, p. 170; Sept., 1913, pp. 360, 531; May, 1917, p. 34. However, Judge Lindsey of Pennsylvania argues for the retention of the grand jury on the basis that it is a common-sense body of men and eliminate many cases that should never reach trial. See also Moley, *op. cit.*, Ch. VI; National Commission on Law Observance and Enforcement, No. 4, *op. cit.*, pp. 124-126.

¹⁵ *Journal of Criminal Law and Criminology*, Mar., 1915, pp. 896, 902.

facts in the case and deliver a verdict based upon the evidence, but a jury that will be favorable to the side of the respective counsel. Judge Storey cites the Diggs case in California, in which the prosecutor deliberately sought a jury in which the fathers of daughters should predominate and from which bachelors should be excluded for the reason that he believed that fathers of daughters would be more favorable to conviction. In a certain case in Chicago 9,425 men were summoned and 4,821 examined before a jury of twelve men was finally secured. In the Calhoun case of San Francisco ninety-one days were spent in getting a jury. Sometimes, as apparently in the McNamara case, this time was used in trying to corrupt a juror, and yet the defense had the right of challenge to fall back upon if the attempt failed.¹⁶ As Judge Storey adds, "It is not the desire for justice, but the desire for victory which has written the laws under which the Bench now languishes."¹⁷ Every unnecessary delay means the possibility of important witnesses dying, leaving the jurisdiction of the court, or being intimidated.

The difference between the United States and England in the swiftness of justice is shown by comparing the Thaw and Rayner cases or the Tucker and Crippen cases. The first trial of Thaw dragged through a period of twelve weeks and finally resulted in a disagreement of the jury. The second trial, finished a year and a half after the offense was committed, resulted in a verdict of insanity, was several times afterwards renewed by means of *habeas corpus* proceedings. While this case was being tried in the United States the Rayner case was called in London and was disposed of in five hours. Or take the Tucker and Crippen cases. Tucker was indicted June 9, 1904, for murdering Mabel Page at Weston, Mass., on March 31, 1904. Although he was indicted on June 9, the trial did not begin until January 2, 1905. It was concluded only twenty-two days later, but the usual motion for a new trial was made, accompanied by a bill of twenty-six exceptions. A year later a motion for a new trial was denied by the Supreme Court. Five days later Tucker was sentenced to be electrocuted. This was followed by a petition before one of the justices of the United States Supreme Court for a writ of error, and also a petition for pardon was filed with the governor of the state. The writ of error was dismissed, pardon was refused, and Tucker was finally executed two years and five months after his arrest. Crippen under the English system was arrested July 21 and arraigned August 29, his trial began October 17, the jury was made up in eight minutes, the trial was

¹⁶ Storey, "Some Practical Suggestions for the Reform of Criminal Procedure," *Journal of Criminal Law and Criminology*, Nov., 1913, pp. 506-507.

¹⁷ *Ibid.*, p. 508. Certain judges defend this delay, especially on appeal, and try to minimize the expense of delay characteristic of the Supreme Court. Judge Dunn of Illinois, citing the cases in sixty volumes of the Illinois Reports covering the ten years from June, 1901, to June, 1911, numbering 258 criminal cases, says that somewhat more than three-fifths of the cases were affirmed, while somewhat less than two-fifths were reversed; *ibid.*, Mar., 1912, p. 845. For a most absurd illustration of this delay see Crowell, "The Burrell Oates Case," *ibid.*, Sept., 1912, p. 407.

concluded in four days, a verdict of guilty was returned by the jury in twenty-nine minutes; appeal was taken and was promptly disposed of, and on November 22, five weeks after the trial began, Crippen was executed. No one has ever claimed that Crippen had a less fair trial than Tucker.¹⁸

To expedite justice various suggestions have been made. In addition to reforms in the indictment and in methods of selecting jurors it has been suggested that instead of wasting time in allowing lawyers to make up their bills of exceptions on appeal, a transcript of the shorthand reporter's notes certified by the judge of the court would be sufficient. It has also been suggested that to secure prompt and effective presentation of criminal appeals on the part of the state, the district attorney of the county where the trial has been held, upon the request of the attorney-general, should assist the latter in the preparation and argument of any criminal case appealed. The trial prosecutor certainly knows more about the case than the attorney-general, who has not been in close contact with it, and the latter is at a serious disadvantage in the presentation of the case. Furthermore it consumes more time than he would need had he the assistance of the prosecuting attorney concerned in the trial.

Another way to expedite matters is to give the trial judge more freedom of action and expression during the trial. The late Chief Justice Taft said that the present practice reduces the power of the judge to little more than that of a moderator in a religious assembly.

It is also a question as to whether it is necessary to have a unanimous verdict on the part of the jury. But since the vast majority of criminal cases are not decided by a jury, it may be doubtful whether such change is worth fighting for.

To-day in most of our states precious hours are used up by opposing attorneys in a criminal trial in addressing the jury. Is there any good reason aside from the precedents why the jury would not be better instructed and have a clearer view of the facts and the law if these long-winded orations to the jury were greatly reduced and the judge given power not only to construe the law for the benefit of the jury but also to set out to them the meaning of the evidence offered? It might be well also if he had power to curb the opposing attorneys when they present biased interpretations of the evidence presented.¹⁹

The "Sporting Theory" of Judicial Procedure. Dean Roscoe Pound of Harvard University set forth this theory in all its nakedness in an

¹⁸ *Ibid.*, Jan., 1911, pp. 684-685; Mar., 1911, p. 855; May, 1911, p. 46; Mar., 1911, p. 853.

¹⁹ *Ibid.*, Jan., 1911, p. 713 ff.; Mar., 1912, p. 847; July, 1912, p. 180; Sept., 1916, pp. 331-332; Feb., 1922, p. 507 ff.; Mar.-Apr., 1933, pp. 1043-1044. *Annals of the American Academy of Political and Social Science*, May, 1933, pp. 77-88. National Commission on Law Observance and Enforcement, No. 8, *Report on Criminal Procedure* (Washington, D. C., June 9, 1931), pp. 38-42.

address before the American Bar Association in 1906. He said that the "sporting theory of justice," the instinct of giving the game fair play in a court, is so firmly rooted in the law profession in America that most lawyers take it for granted as a fundamental legal tenet. He added: ²⁰

But so far from its being a fundamental fact of jurisprudence, it is peculiar to Anglo-American law; and it has been strongly curbed in modern English practice. With us, it is not merely in full acceptance, it has been developed and its collateral possibilities have been cultivated to the furthest extent. Hence in America we take it as a matter of course that a judge should be a mere umpire, to pass upon objections and hold counsel to the rules of the game, and that the parties should fight out their own game in their own way without judicial interference. We resent such interference as unfair, even when in the interests of justice. The idea that procedure must of necessity be wholly contentious disfigures our judicial administration at every point. It leads the most conscientious judge to feel that he is merely to decide the contest, as counsel presents it, to forget that they are officers of the court and to deal with the rules of law and procedure exactly as the professional football coach with the rules of the sport. It leads to exertion to "get error into the record," rather than to dispose of the controversy finally and upon its merits. It turns witnesses, and especially expert witnesses, into partisans pure and simple. It leads to sensational cross-examinations "to affect credit," which have made the witness stand "the slaughter house of reputations." It prevents the trial court from restraining the bullying of witnesses, and creates a general dislike, if not fear, of the witness-function, which impairs the administration of justice. It grants new trials just to give the parties a chance to play another inning in the game of justice. It creates vested rights in errors of procedure, of the benefit whereof parties are not to be deprived. The inquiry is not, what do substantive law and justice require? Instead, the inquiry is, have the rules of the game been carried out strictly? If any material infraction is discovered just as the football rules put back the offending team five or ten or fifteen yards, as the case may be, our sporting theory of justice awards new trials, or reverses judgments, or sustains demurrers in the interest of regular play. The effect of our exaggerated contentious procedure is not only to irritate parties, witnesses and jurors, in particular cases, but to give to the whole community a false notion of the purpose and end of law. Hence comes, in large measure, the modern American race to beat the law. If the law is a mere game, neither the players who take part in it nor the public who witness it can be expected to yield to its spirit when their interests are served by evading it.

This sporting theory of court procedure, a survival of the practice of settling differences by personal combat, accounts for many of the technicalities that now obstruct and sometimes pervert justice, often prevents a speedy discharge of the innocent, and enables the guilty to escape their just deserts. It is partly responsible for the absurdities of the present rules of evidence. For example, the accused person is not compelled to testify concerning the crime of which he is accused. This principle holds in spite of the fact that we allow him to confess his crime and plead guilty. Certainly he is the best witness as to whether he committed the crime or not. It is a question whether the substantial requirements of justice are served by this rule, which is partly rooted in the sporting

²⁰ *Proceedings, American Bar Association, 1906, Part I, p. 395 ff., quoted by Lawson, Journal of Criminal Law and Criminology, May, 1910, p. 80.*

theory of justice and is partly a survival from the time the accused was not permitted to testify in his own behalf but might be subjected to torture and forced to confess. Certainly if the burden of proof is on the state, it might be allowed to put the accused on the stand and examine him to find out what he has to say about the circumstances connected with the crime.²¹

In this connection the limitation upon the function of judges should be noticed. It is the "sporting theory" of justice that has made the judge simply an umpire, instead of an agent of the state whose function it is to ascertain the facts.²²

Again this theory has made of the justices of the courts of appeal simply arbiters to sit in judgment upon the fairness with which the game was played according to the rules in the trial court. Some of the states are getting away from this "sporting theory," at least in the courts of appeal, and have given them the authority to consider not only whether the game was played according to the rules, but whether on the basis of the facts brought out at the trial substantial justice was done.²³

In an attempt to correct the situation another suggestion has been made that has been adopted in a few of our courts. Instead of allowing the accused to hire his own lawyer to defend him, the state provides the lawyer for the defense as it does the lawyer for the prosecution. Thus has arisen the office of *public defender*. This reform has grown out of the belief that if both prosecution and defense are paid for by the state, both will be equally interested in seeing that justice is done. Poor men accused of crime, unable to hire good lawyers, now defended often by young or incompetent lawyers appointed for them by the state, will be represented by state counsel. It lessens the legal contest now to be found in criminal trials. It leads to the settlement of many more cases out of court. It saves expense both to the accused and to the state. It prevents the perversion of justice in the cases of many habitual criminals. It makes the courts more nearly what they should be, instruments for the settlement of difficulties and the doing of social justice.

Actual experience with public defenders substantiates these statements. The following table comparing the cases defended by private and public defenders in Los Angeles County, Cal., during the year 1914 shows the advantages of the public defender in criminal cases.²⁴

This table shows that a much larger percentage of the defendants represented by the public defender plead guilty than of those represented by assigned attorneys or attorneys in private practice. It also shows that a smaller percentage of the defendants represented by the public defender

²¹ *Journal of Criminal Law and Criminology*, Jan., 1911, p. 712; July, 1912, p. 187; Nov., 1913, p. 501; Sept., 1916, p. 336; May, 1924, p. 5.

²² *Ibid.*, Nov., 1913, p. 507; Sept., 1916, p. 337.

²³ *Ibid.*, May, 1910, p. 55.

²⁴ *Ibid.*, July, 1916, p. 230; Mishkin, "The Public Defender," *ibid.*, Nov., 1931, p. 489; Rubin, "Criminal Justice and the Poor," *ibid.*, Jan., 1932, p. 705.

were acquitted, and a larger number were placed on probation, than under the other system. Furthermore, fewer cases went to trial and more were settled out of court than under the system of private defense.²⁵

COMPARISON OF RESULTS OF CASES DEFENDED BY PRIVATE AND PUBLIC DEFENDERS

	<i>Assigned Attorneys in 1913 Serv- ing Without Pay</i>	<i>Attorneys in Private Practice paid by Defendants in 1914</i>	<i>Public Defenders in 1914</i>
Number of cases	115	514	260
Pleas of guilty	71	250	183
Per cent of cases in which pleas of guilty were entered	61.7	48.6	70
Number of cases in which probation was granted	31	154	87
Per cent of cases in which probation was granted	27.8	30	33.4
Number of trials	30	147	58
Per cent of cases that went to trial	26	28.6	22.3
Verdicts of not guilty or disagreements	6	54	20
Per cent of trials in which verdict of not guilty was rendered or jury disagreed	20	36.7	34.4

As a mandatory system it has been objected to as an unwarranted infringement of the rights of the accused. It is also urged that we should get poorer defense lawyers under this system than under the present one. Again, opponents argue that public defense would do away entirely with our well-established contradictory procedure. The first argument has some merit, the second less, and the last none in the light of the results of such procedure.

The Organization of Courts. Not only from the laity but from the bar itself has come a chorus of complaints against the judicial chaos in our large centers. The courts have grown up in a haphazard way in response to needs that have appeared from time to time. We have police courts, magistrate courts, courts of common pleas, municipal courts, county courts, courts of domestic relations, juvenile courts, various courts of appeal, and the Supreme Court. A movement has begun to bring order out of this chaos by the *organization in the larger centers*, at least, of a unified court system. Members of the bench and bar in various parts

²⁵ Woods, "Necessity for Public Defender Established by Statistics," *ibid.*, July, 1916, pp. 230-235. See also *ibid.*, Jan., 1915, p. 660; Nov., p. 554; May, 1923, p. 5; Feb., 1927, pp. 476-490. See also Sanders, "The Legal Aid Clinic as the Public Defender," *Journal, Duke Bar Association*, May, 1934, p. 43; Stewart, "A Criticism of the Public Defender System," *John Marshall Law Quarterly*, June, 1936, p. 245.

of the United States have furnished the leadership in this reform. The movement began with the unification of the criminal court system in Chicago in 1904, when an act of the legislature created the Municipal Court of Chicago and provided for its organization on an efficiency basis.²⁶ As a result, with the addition of three judges to an original force of twenty-seven, the court has handled more than twice the former number of cases. This change has not only hastened procedure, done away with delays in trial, and saved jurors' time and therefore money for the county, but has so ordered the time of the judges that a maximum number of cases may be handled in a given time, has created specialized branches of the court to handle particular kinds of problems, through the adoption of informal procedure, has hastened the course of trials, and has got many cases settled out of court through arbitration. Even with this progress, however, much still remains to be done to make the criminal courts of Chicago function easily, swiftly, and inexpensively.²⁷

A further step was taken in Detroit in 1920 in the unification of the whole system of criminal courts, a unique step in the history of American cities. A presiding judge was chosen, with full power under the new law to control the classification of work and assignment of judges. A psychopathic laboratory was established. Shysters practising around the court were cleared out. A night session was begun to reduce the need for bail, and many bail-bond sharks consequently were put out of business. The first five months fifty out of fifty-one persons charged with robbery while armed with a deadly weapon were convicted and sentenced to the minimum terms of ten or fifteen years. Before the unification only 6 per cent of the felony cases were disposed of within six weeks, while in the new court at the end of six weeks 96 per cent of the felony cases were finally ended.²⁸ In addition this organization of courts expedited the trial of cases, as shown by the fact that 66 per cent of the felony cases brought into the court during the year were tried within seven days after the arraignment and that 46 per cent were disposed of on the same day they were arraigned. This not only relieved the jail of the burden of detaining these prisoners and did away with the necessity of bail-bonds but also put the terror of the law into the hearts of habitual criminals and taught a salutary lesson to the shyster lawyers.²⁹ The reduction of 58 per cent in Detroit crime in comparison with the previous year was due in part at least to this change in the organization of the court.³⁰ It has been esti-

²⁶ *Journal of American Judicature Society*, Feb., 1918, p. 134 ff. However, in Chicago there are other courts that deal with criminal cases, and therefore in that city the unification is not complete.

²⁷ *Ibid.*, Vol. I, pp. 15-17, 133-151.

²⁸ *Ibid.*, Feb., 1922, p. 141. For the history of the founding of this court and the progress made with details as to results see *ibid.*, Aug., 1920, p. 38 ff.; Apr., 1921, p. 139 ff.; Feb., 1921, p. 133 ff.; June, 1920, p. 14.

²⁹ *Ibid.*, June, 1922, p. 185 ff.

³⁰ *Ibid.*, Apr., 1922, p. 165 ff.

mated that during its first year the court saved the taxpayers of Detroit more than a million and a half dollars.

Encouraged by this success in the city of Detroit and in other places the leaders of the bench and bar and other members of the American Judicature Society have put on an aggressive campaign for the *unification of state courts*. This movement has also been aided by the unification of the federal courts under the leadership of the late Chief Justice Taft. It is impossible to go into detail with reference to the unification of the state courts, but the accompanying diagram will make clear what is intended. The advocates of this reorganization relying upon the formation of judicial councils among the judges of some of the states believe that the results of unification of the courts will produce results no less noteworthy than have appeared in some of our large cities under a unified system.⁸¹ The American Bar Association as early as 1909 advocated such a system.⁸²

The whole movement for the unification of criminal courts in this country doubtless had its instigation from England. The first steps to this end in England were taken in 1873 and 1875 when the Lord Chancellor was made the administrative head of the entire judicial system.

Cheering progress has been made in this country toward unification of courts. In addition to the organization of the criminal courts, and sometimes all the courts, in some of our large cities, Wisconsin in 1913 enacted a law providing a Board of Circuit Judges to act as judicial council for the more efficient handling of circuit court business in that state. In 1923 Ohio and Oregon created judicial councils to provide co-ordination of various state courts and oversee the administration of justice. In 1922 Congress provided for the establishment of a federal judicial council with the chief justice at its head. The movement in some of the other states is making progress.

Although the movement for the unification of the courts is slowly making progress, it is constantly becoming clearer that the unification concerns not only the courts but the consolidation of the whole machinery of justice—the police, the prosecution, and the courts. The appointment rather than the election of judges is being discussed. The closer co-ordination of the work of the prosecutor and of the police in the interest of greater efficiency is urged. State supervision of the whole administration of criminal justice is being urged by various bodies concerned with the problem of crime.⁸³

⁸¹ *Ibid.*, Dec., 1917, p. 100. See also National Commission on Law Observance and Enforcement, No. 4, *op. cit.*, pp. 158-161.

⁸² *Journal of the American Judicature Society*, June, 1917. For other articles upon unification of state courts see *ibid.*, Dec., 1921, p. 105 ff.; Dec., 1922, p. 101; Oct., 1934, pp. 79-88.

⁸³ *Ibid.*, Oct., 1934, p. 84 ff. See also Pound, *Criminal Justice in America* (New York, 1930), pp. 188-194; National Commission on Law Observance and Enforcement, No. 4, *op. cit.*, pp. 158-160.

GENERAL COURT OF JUDICATURE

JUDICIAL FUNCTION

Court of Appeal

SUPREME COURT DIVISION

Chief Justice and six judges

ADDITIONAL BRANCHES

of three judges each

ADMINISTRATIVE FUNCTION (In aid of Judicial Function)

CHIEF JUSTICE

PRESIDING JUSTICE

of the Supreme Court division and branches
of Court of Appeal

PRESIDING JUSTICES

OF THE DIVISIONS OF
the Superior Court

PRESIDING JUSTICE
of County Courts

COUNTY JUDGES

RULE-MAKING FUNCTION (In aid of Judicial Function)

JUDICIAL COUNCIL
Composed of

CHIEF JUSTICE

ONE MEMBER OF Court of Appeal

PRESIDING JUSTICES of Superior
Court

PRESIDING JUSTICE of County Court

SUPERIOR COURT

(Five territorial divisions)

FIRST DIVISION

Presiding Justice
and judges
..... masters

SECOND DIVISION

Presiding Justice
and judges
..... masters

THIRD DIVISION

Presiding Justice
and judges
..... masters

FOURTH DIVISION

Presiding Justice
and judges
..... masters

FIFTH DIVISION

Presiding Justice
and judges
..... masters

COUNTY COURT

A Presiding Justice; one branch and one County Judge for each County; in certain more populous
Counties one or more Associate County Judges.

SCIENCE AND THE COURTS

The criminal court originated in a pre-scientific age. In England, where the main lines of organization and procedure were developed, the architects of the court were most concerned with measures that would protect the accused against the tyranny of the crown. From that point of view the contentious procedure, the rules of evidence, many of the restrictions on selection for jury service, provisions such as relieving the accused or his wife from testifying, and the meticulous statement of the indictment were improvements on the court as it existed previously.

But in these times with the enormous development of science the court cannot perform its function of ascertaining the truth or falsity of the charge without the aid of modern scientific knowledge. Identification of the perpetrator of a crime in many cases cannot rest upon the common-sense observations of police and detectives. The science of ballistics whereby it can be determined in most cases whether a bullet was fired from a certain gun; chemical knowledge in aid of the identification of hair, textiles, wood, metal, and so on; knowledge of the effect of suggestions by the interviewer on the pulse rate and breathing rate, giving measurable information to the "lie detector"—all these have been introduced in recent times as evidence. Also knowledge of psychopathic conditions such as feeble-mindedness, various types of insanity, and emotional instability of various degrees are now available not only to aid in court procedure, but also to give guidance to the court as to what treatment is appropriate to the convicted.

Slowly and only by degrees and only in a few states have these scientific aids made their way against traditional forms and methods. It was only a few years ago that the Briggs Law made it necessary in Massachusetts for those accused of a felony or indicted for any other offense more than once or convicted previously of a felony to be given an examination by the Department of Mental Diseases, and for the results to be made available to the court. The purpose of this law is "to determine the mental condition, the existence of any mental disease or defect which would affect criminal responsibility" and thus to enable the court to determine whether the person should be held for trial or handled as a mentally diseased or defective person. This procedure in that state does away with the scandal of contradictory expert testimony given by psychiatrists employed by the prosecution and by the defense.

But excellent as such a step is in aiding the court, it does not solve the problem that has been attacked by the Youth Correction Authority Act proposed by the American Law Institute. This proposed Act is based on the theory that the only function of the court is to determine the guilt or innocence of the accused, and if he is guilty to commit him to an authority empowered to study him with a view to determining what treat-

ment should be given him in order to protect society and to correct his delinquent tendencies. California is the only state at this writing that has enacted such a law and set up an organization appropriate to its proper functioning. It has gone still further and has provided such an authority for older adult criminals. As stated in the chapter on parole and indeterminate sentence, two such bills have been introduced into Congress but at this writing have not yet been enacted into law. References may be found there to selected literature on the subject.

Thus slowly—how slowly!—an antiquated criminal procedure is changing in accordance with the development of modern science. During the transition there are conflicting elements in the system, each struggling with the other, with consequent failure to function smoothly and effectively in the protection of society and in correcting its erring members. Perhaps nowhere can one see more clearly the impediments to clearly necessary social change provided by the tough texture of tradition and hoary custom.

PUBLIC ATTITUDES AND LAW ENFORCEMENT

While these various explanations of the inefficiency of the courts must be considered, underlying them all is a more fundamental sociological condition. That is the lack of unified desire of the people that in all circumstances the law should be enforced. Most laws are not made for ourselves or for our class, but for some one else. We do not want the police in all cases to arrest an offender. We do not want one of our friends to be prosecuted for his crime. Labor-unions do not want to see one of their leaders, nor business men one of their fellows, convicted and sent to jail. Hence when prosecution threatens, we exert whatever influence we have to protect from the law those who are closely tied to us by social and business bonds. These attitudes affect the police and the judges. No amount of fiddle-faddling with the machinery of justice, while it will help, will alter this fundamental sociological condition. It can be altered only by gradually building up in the public—all classes of it—a lively consciousness that law and its machinery is for the protection of the whole society, not only for our particular class, or business, or profession. Such building is only glacial in its speed. But it can be done, because it has been done in other countries.

PROGRESS IN THE SOCIALIZATION OF THE COURTS

Briefly summarized the steps necessary to socialize the criminal courts, that is, to bring them up to their utmost efficiency in serving the social needs of the community in the suppression and prevention of crime, are as follows: (1) Provide for simplified pleadings on information. (2) Abolish the grand jury and substitute preliminary hearing by a judge. (3) Simplify the choosing of a jury with diminution in the privilege of challenge. (4) Permit verdict on a five-sixths majority of the jury. (5) Al-

low the judge to take more part in bringing out evidence in the trial, permitting him to comment on the evidence as well as upon the points of law in his charge to the jury. (6) Abolish the antiquated legal presumption of innocence, which in the minds of the laymen of the jury has very little weight even at present. (7) Substitute public for private defense, at least in trials where indigent persons are accused. (8) Compel accused persons to testify or allow the jury to draw inferences from their refusal. (9) Simplify appeals by doing away with bill of exceptions, and allow appeal on transcript of evidence at the trial. (10) Allow courts rather than prosecution or defense to call experts.³⁴ (11) Limit the function of the trial court to the determination of guilt or innocence, leaving the determination of treatment to a board of experts composed of judges, doctors, psychiatrists, sociologists, and economists under an indefinite sentence law.³⁵ (12) Reorganize the court procedure by substituting rules of the court for statutory procedure. (13) In the extension of court functions to such special branches as family courts, courts of small claims, juvenile courts, preventive courts, and so on, keep them within the organization mentioned before rather than have them courts of independent jurisdiction.³⁶

The chief responsibility for the changes necessary to socialize the courts rests upon the lawyers who compose the profession, who are members of the bench, and who form the majority in all our legislatures. All the laymen can do is to hold up the hands of these representatives of justice as they endeavor to perfect the system. They must lead the way and educate the people to sustain them in legislation necessary for the further socialization of the judicial system and to provide for the training of lawyers in the social purposes of criminal procedure, criminology, and penology.

QUESTIONS AND EXERCISES

1. What are the chief criticisms against the judicial system of the present time in connection with the treatment of crime?
2. Describe the system of courts (a) in your state, and (b) in your city.
3. What is meant by a unified court? by a state judicial council?
4. What is the function of a public defender? What are the arguments in favor of the Grand Jury? What are those against it?
5. What changes are necessary to socialize modern criminal judicial procedure?
6. Discuss the advantages and disadvantages of limiting the function of the court to determining the guilt or innocence of the accused and of handing the entire treatment over to a board.

³⁴ *Journal of Criminal Law and Criminology*, Jan., 1915, p. 650.

³⁵ This idea, expressed in *Criminology and Penology* in 1926 for the first time in any textbook, has won increasing support. See Smith, *Progressive Democracy* (New York, 1928), pp. 209-215; National Commission on Law Observance and Enforcement, No. 4, *op. cit.*, pp. 166-171.

³⁶ Most of these points have been covered in the previous discussion under the criticisms of the courts. Others are covered by the following references: *Journal of Criminal Law and Criminology*, Sept., 1916, p. 332; Mar., 1915, p. 827; May, 1917, p. 2; May, 1920, p. 47. National Commission on Law Observance and Enforcement, No. 8, *op. cit.*, pp. 1-51. Others of these points grow out of our discussion in other chapters of the various methods of handling those who have been found guilty of crime.

Chapter XVIII

JUVENILE COURTS

A most interesting development of the courts is the juvenile court. This court has grown out of the demand for the socialization of the courts.

THE BACKGROUND OF THE JUVENILE COURT

The principles underlying some aspects of juvenile court legislation have long been known in legal history. It has grown out of an old concept found in the common law that the state owes to children a protection that it does not owe to adults. This concept was well established in the English courts of equity. From very early times children have been regarded as wards of chancery. While the chancery usually acted only when a property right was involved, in actual practice the chancellor more than a century ago exercised the right to interfere also for the personal welfare of the children. Thus Lord Eldon took away the children of the Duke of Wellesley because of his immoral conduct. Shelley was deprived of the custody of his children because he declared himself to be an atheist. In this country the same right was exercised.

Moreover, there has long been a sharp distinction between children and adults in criminal cases. The common law recognized that children under seven are incapable of committing a crime. The extension of the age limit of childhood to sixteen or more years in our juvenile court legislation and the attempt to enforce through the juvenile court the duties of parents with respect to children have merely extended the application of the common-law rule, although the effect has been to build a new and radically different structure upon old foundations.

Furthermore, even the concept of special courts for special classes of offenders, was not unknown to the common law. It was well established that certain classes were to be treated by special courts and different standards. "Benefit of clergy" is a historical illustration of special treatment for a powerful social class. The juvenile court furnishes a refuge for the most helpless.¹ Nevertheless, the modern juvenile court is a good illustration of the tendency of the lawyers to develop a new process within the framework of an old theory, to put new wine into old wine-skins.

¹ Flexner and Oppenheimer, *The Legal Aspect of the Juvenile Court*, Children's Bureau Publications, No. 99 (Washington, D. C., 1922), pp. 7, 8.

The present juvenile court is only the culmination of attempts to meet a problem long recognized by a number of European countries as well by various states in this country and in Australia. England in 1847 passed the Juvenile Offenders Act, which was enlarged and amended by the Summary Jurisdiction Act in 1879. These provisions enabled the justices to try summarily children under fourteen and "young persons" between fourteen and sixteen for all offenses except homicide. A Swiss ordinance of 1862 provided that cases involving young persons should not be given publicity and that all cases in which adults were not involved should be heard separately. South Australia in 1889 by ministerial order, legalized in 1895, provided for separate hearings and probation for children under eighteen. In 1894 some provinces of Canada handled cases of children in the courts in a different manner from those of adults.

In this country Massachusetts in 1870 required separate hearings for juvenile offenders in Suffolk County, in 1872 extended these provisions to all police, municipal, and district courts of the state, and in 1877 required that these court "sessions for juveniles" should keep separate docket and records for such cases. In 1861 Illinois authorized the mayor of Chicago to appoint a special commissioner to try boys between the ages of six and sixteen who had been charged with petty offenses. In 1867 such cases were transferred to the regular court judges. In 1869 Massachusetts passed a law requiring the appointment of a state visiting agent, who in addition to his visitorial duties was to attend all hearings when application was made for the commitment of any child to any house of refuge. In lieu of his commitment the child might be placed with a private family or be indentured. Massachusetts in 1878 passed a probation law that applied to juveniles as well as adults. The example of Massachusetts influenced South Australia to create a children's department in Adelaide in 1895 and three years later to establish a juvenile court for the trial of persons under eighteen years of age.

But in all countries before the adoption of the juvenile court act the children were dealt with under the common law criminal procedure. In some other states during the last quarter of the nineteenth century and before the juvenile court was devised, cases of incorrigibility and truancy were heard by the probate court without juries and without regard to the ordinary procedures and legal technicalities.²

ORIGIN OF THE JUVENILE COURT

There is some dispute whether the honor of originating the juvenile court in the United States belongs to Colorado or to Illinois.³ With the

² Belden, *Courts in the United States Hearing Children's Cases*, Children's Bureau Publications, No. 65 (Washington, D. C., 1920), p. 7. See also Lou, *Juvenile Courts in the United States: Their Law and Practice* (Chapel Hill, N. C., 1927), Ch. II.

³ See Abbott, "History of the Juvenile Court Movement Throughout the World," in *The Child, The Clinic and The Court* (New York, 1925), pp. 267-273; Lindsey, "Colorado's Contribution to the Juvenile Court," *ibid.*, pp. 274-297.

merits of these conflicting claims we are not here concerned. It is certain, however, that in Denver, Col., Judge Ben Lindsey, under the school laws of that state in 1899, and Chicago a little later in the same year, established courts for the special hearing of delinquent children's cases. In both cases the new court grew out of a recognition of the evils attendant upon trying children's cases in the criminal court and the cumbersome methods of dealing with them in probate or other courts.⁴

Fundamental Principles of the Juvenile Court. The Children's Bureau and the National Probation Association have summarized the essential features of the juvenile court as follows:⁵

1. Separate hearings for children's cases by judges specially qualified for such work
2. Informal or chancery procedure, including the use of petition or summons rather than indictment and warrant
3. Regular probation service, both for investigation and for supervisory care
4. Detention separate from adults
5. Special court and probation records, both legal and social
6. Provision for mental and physical examinations

DEVELOPMENT OF THE JUVENILE COURT

The laws of all but two states (Maine and Wyoming) have provided for juvenile courts.

No thoroughgoing, country-wide study of juvenile courts in this country has been made by the Children's Bureau since 1918. At that time the situation in brief is represented by the adjoining graph. In that year there were 2,034 courts having authority to hear children's cases involving delinquency or neglect. However, only 321 of these courts could be classified as specially organized for juvenile court work on the basis of all the fundamentals mentioned above. In half of the forty-eight states less than a fourth of the population was in reach of the courts equipped for children's work according to these minimum standards, and in several of the states no court with special organization was reported. Specially organized courts were found in all cities with over 100,000 population and were available to 70 per cent of the total population living in cities of from 2,500 to 100,000. In cities of from 5,000 to 25,000 such courts were available to only 29 per cent of the population, while to only 16 per cent of the people living in the rural communities were such courts available.⁶ In 1938 twenty-six states and the District of Columbia had

⁴ In addition to the references cited in the previous footnotes see Belden, *op. cit.*, p. 7; Lathrop, "The Background of the Juvenile Court of Illinois," in *The Child, The Clinic and The Court* (New York, 1925), pp. 290-297; Bowen, "The Early Days of the Juvenile Court," *ibid.*, pp. 298-300; Hurley, "Origin of the Illinois Juvenile Court Law," *ibid.*, pp. 320-330.

⁵ Belden, *op. cit.*, p. 10. *A Standard Juvenile Court Law*, National Probation Association (New York, 1933).

⁶ Lenroot and Lundberg, *Juvenile Courts at Work*, Children's Bureau Publications, No. 141 (Washington, D. C., 1925), p. 2. For juvenile court statistics see Children's Bureau Publications, No. 212, *Juvenile Court Statistics: 1930* (Washington, D. C., 1932).

raised the age limit for the jurisdiction to eighteen years. But in that year the Children's Bureau received statistical reports from only 476 courts in twenty-eight states and from the District of Columbia. Of these ninety served cases in cities of 100,000 or more population. Only one-third of the cases reported were referred to a probation officer. As late as 1938 Congress passed a juvenile court act for juvenile offenders of United States' laws. In seventeen states the juvenile court statutes authorize the appointment of a referee especially for the cases of girls.

The juvenile court has been adopted in a number of foreign countries. Abbott in 1925 gave a list, probably incomplete, of the nations that had adopted it.⁷ Since then the movement has spread to many other countries. The forms taken vary with the court system and with already existing methods of handling delinquent children.⁸

QUALITY OF WORK DONE IN THE JUVENILE COURTS OF THE UNITED STATES

Since five-sixths of the courts in the United States in 1918 did not come up to the minimum standards of the Children's Bureau, that is, courts reporting (a) separate hearings for children, (b) officially authorized probation service, and (c) the recording of social information, it is evident that most of our juvenile courts were such in name only.

The 321 that were classified by the Children's Bureau as especially organized children's courts may be characterized in respect to their service as follows: (1) Practically all of them had some system of detention other than the jail. (2) Many of them had other special features that might be considered essential for successful work with children. For example, twenty-two were established by special laws and operated separately from other court systems. (3) Every state in the Union but one had legislation providing for juvenile probation. Less than half of the courts having jurisdiction over children's cases had probation service. Only eight states reported a recognized worker for every court. In fifteen states only a fourth or less of the courts had official probation work. Less than half the courts reporting probation work and less than one-fifth of all the courts having jurisdiction over children's cases had regular officers giving full-time paid service to probation. (4) In only six states were agencies for supervising juvenile probation work reported. (5) The majority of juvenile courts reported separate hearings for children. However, a considerable number of the smaller courts reported that the hearings were not separate. (6) While many courts reported a woman present at the hearing of girls' cases, in most instances she was a probation officer. In only six large city courts was there found a qualified woman referee

⁷ Abbott, "History of the Juvenile Court Movement Throughout the World," in *The Child, The Clinic and The Court*, p. 271.

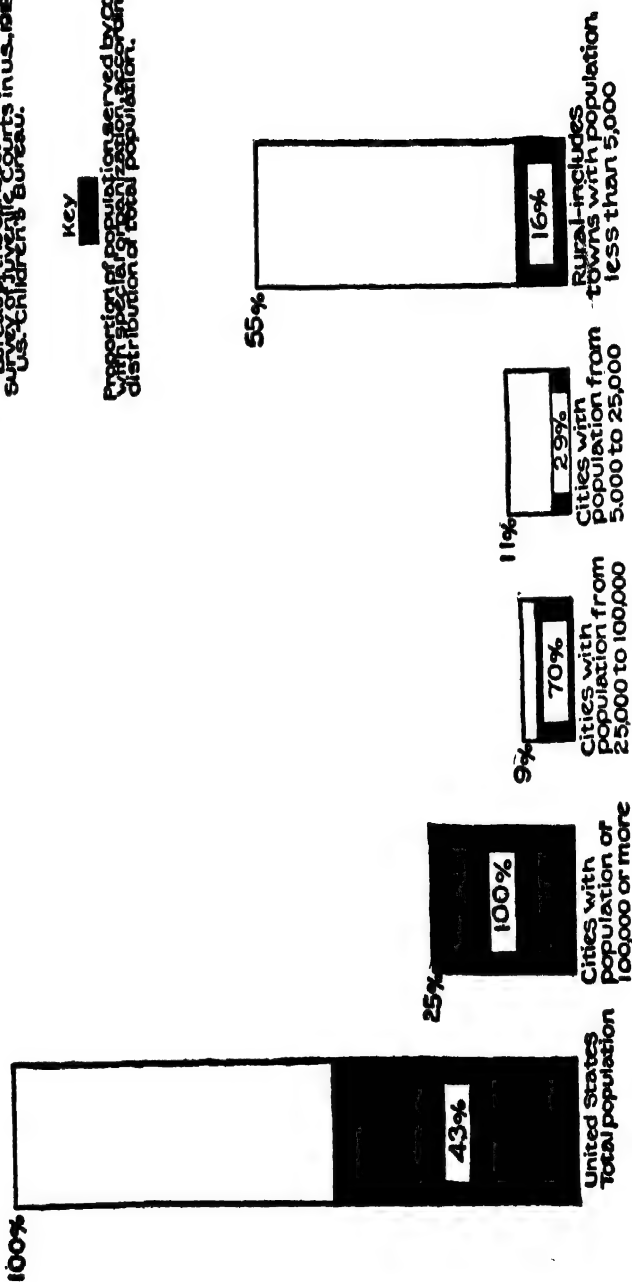
⁸ Suzuki, *History of the Treatment of Juvenile Offenders and the Present Status of the Juvenile Court of Japan* (Tokyo, 1931), p. 5.

URBAN AND RURAL DISTRIBUTION OF THE POPULATION OF THE UNITED STATES AND PROPORTIONS SERVED BY COURTS WITH SPECIAL ORGANIZATION FOR CHILDREN'S CASES

Basis of data:
 Estimates of population of U.S., 1917
 Estimates of the Census
 Bureau of the Census
 Survey of Juvenile Courts in U.S., 1918.
 U.S. CHILDREN'S BUREAU.

KEY

Proportion of population served by courts
 with special organization for
 distribution of total population.



for girls' cases, although in Washington, D. C., the judge of the juvenile court was a woman and in seven counties of Kansas the probate judges who heard the children's cases were women. In 1942 in seventeen states a woman referee was authorized by law. (7) There was a general lack of uniformity in records, the best record-keeping being in those states that had state supervision of probation work. (8) Of 909 courts replying to the questionnaire of the Federal Bureau, 671 reported provision for physical examination. In a majority where the examination was a part of the investigation only those children were examined who gave evidence of abnormal physical condition. Only 7 per cent of these 2,034 courts replying to the questionnaire reported mental examination in clinics organized for that purpose or by persons having psychiatric or psychological training. Often in these cases only those children were examined who presented special problems or were repeaters. In only thirteen of these courts were clinics maintained as a part of the court organization. These clinics were all located in cities of 100,000 or more population. (9) In many small towns and rural communities, even in states that have legal provisions for juvenile courts, children were still subjected to unsocialized court procedure that the juvenile court was intended to get away from. Even of those with separate hearings in children's cases many still maintained the old procedure and imposed the old punishments.

In short, of the estimated 175,000 children's cases brought before the courts in the United States in 1918 approximately 50,000 came before courts not adapted to the handling of children's cases. Says this report, "Statistics cannot adequately reveal the injury done these children through their association with adult offenders, their trial under the old criminal processes, and the absence of equipment for the study of their needs or for proper oversight and protection."⁹

In the years since that report in 1918 there is evidence that in a number of states standards have improved. The Children's Bureau and the National Probation Association have been working diligently to secure higher standards. State commissions on child welfare, the White House Conference, and many other organizations have been agitating for better work and improved facilities in all juvenile courts.

A number of developments have occurred that operate to supplement

⁹ Belden, *op. cit.*, pp. 12-19. Mack, "The Chancery Procedure in the Juvenile Court," *The Child, the Clinic and the Court*, pp. 310-319. See also The White House Conference on Child Health and Protection, *The Delinquent Child* (New York, 1932), pp. 256-290; Lou, *op. cit.*, Children's Bureau Publications: No. 121, *Juvenile Court Standards* (1923); No. 141, *Juvenile Courts at Work* (1925); No. 193, *The Child, the Family and the Court* (1929). Also Chart No. 17, Lyman, *Analysis and Tabular Summary of State Laws, etc.* (1930); National Probation Association, New York, *The Child and the Court* (1932); *A Standard Juvenile Court Law*, Revised Edition (1933); Breckenridge, "Re-Examination of the Work of Children's Courts," *Year Book*, National Probation Association, 1930; Hiller, *Juvenile Court Laws of the United States*, National Probation Association (New York, 1933).

the work of the juvenile courts and improve their operation. For example, in a number of the larger cities courts of domestic relations and family courts have been organized, which in some instances take over the work of the juvenile court.¹⁰ This is done on the theory that the child is part of a family and should be handled as a part of the family problem. Then, too, some of the state have statutes setting up children's boards in the counties, with supervision by a state department. Also, that section of the Federal Social Security Act dealing with children has made case work available for dependent and neglected children in danger of becoming delinquent in areas that have no probation officers. Fifteen states have enacted statutes authorizing the appointment by judges, having jurisdiction of children's cases of unpaid committees to advise and coöperate with the court and probation officers in delinquency cases. Schools and private agencies are more alive than ever in assisting the courts, when requested, in taking juvenile delinquents under their supervision. A few states have discussed the possibility of providing state probation officers for those areas that cannot afford juvenile probation officers attached to the court.

JUVENILE COURT STANDARDS

In 1923 a committee meeting under the auspices of the Federal Children's Bureau and of the National Probation Association, after long discussion and conference with people engaged in juvenile court work and those interested in the way in which such courts operate throughout the United States, proposed the following standards:

The Court. Every community should have available a court equipped to deal with children's cases, rural as well as urban. Usually the county should be the unit of jurisdiction. The juvenile court should be a court of superior jurisdiction and a court of record, but the evidence given in the juvenile court should not be lawful evidence against the child in any civil, criminal, or other cause or proceeding in any other court. The proceedings should be in chancery or equity and not criminal in their nature. The court, however, should have criminal jurisdiction in adult cases pertaining to children. The jurisdiction of the juvenile court should be broad enough to cover cases of delinquency by the custody of children who need care outside of their own homes—adoption cases, cases of mental defects and disorder, truancy, cases in which adults are concerned in contributing to delinquency or dependency, non-support or desertion of minor children, and the determination of paternity and support of children born out of wedlock. The age limit should be extended to a point not lower than eighteen years. Jurisdiction once established should continue until the age of twenty-one unless earlier the case is dismissed or passes out of the jurisdiction of the court.

¹⁰ Hiller, "Juvenile and Domestic Relations Courts," *Social Work Year Book*, 1943 (New York, 1943), pp. 256-262.

The judge should be chosen because of his special qualifications for juvenile court work. His tenure of office should be long enough to warrant special preparation and the opportunity to develop interest. He should not have so many cases that it is impossible for him to give due care and consideration to each case.

Process before Hearing. The police on arresting a child should at once hand over the jurisdiction to an officer of the juvenile court. The police, however, should operate in close coöperation with the court in handling juvenile cases. They should not handle unofficially cases of juvenile delinquency after the child has been taken into custody. That should be done by the court or the probation officer. Also they should not hold the child in custody in the police station or in jail. His place of detention should be determined by the juvenile court and its officials. Only occasionally should bail or appearance bond be required. The determination whether a petition should be filed or other formal action taken should be made by the judge or a probation officer designated by him after due investigation. The judge should exercise supervision over all the work of the court.

Detention. It should be the policy of the court to detain as few children as possible, and those as short a time as possible. Whenever possible those detained should be placed in private boarding homes, and detention should be limited to those for whom it is absolutely necessary. They should never be kept in jail or police stations. If a detention home is provided, it should be very carefully supervised, else demoralization of the child is sure to result. It should not be used as a disciplinary institution.

Study of the Case. At the earliest possible moment social investigation of the case should be started. In addition the court should see to it that a physical and mental study of the child himself is made and that on the basis of this study an analysis is made of the causes of his delinquency and the program of treatment outlined. These studies should be made by persons adequately trained for that purpose. In rural communities this can be provided either through arrangements with such agencies in urban centers near by, through traveling clinics, or through special arrangement with a state department.

Hearing. Hearing of the case should be held as soon as proper notice to those concerned can be given, if possible within forty-eight hours. There should be no publicity in a juvenile court case. None should be present except those directly concerned, and witnesses only when testifying. Parents or guardian should be present; the hearing should be informal; the child should not be treated as a criminal, although sound rules of evidence should be kept in mind; there should be a written report of the proceedings to be used by the court for the purpose of record and interpretation. Jury trials should not be permitted, and children should not be present at the hearing of neglect or dependency cases except for the time

required for identification when that is necessary. In hearing cases involving adults the usual court procedure in criminal cases is necessary to give the defendant all the safeguards that the law and Constitution offer him. In girls' cases it is desirable that they should be heard by properly qualified women referees. The judge should finally pass on the findings and recommendations and review the disposition of the cases by the referee.

Disposition of Cases. There should be sufficient variety of resources in the community so that the court may fit the treatment to the needs of the children instead of sending all of them to institutions. The latter should be used only after careful study or repeated trials have made it clear that it is impossible to adjust the child to his home life and community by other means. Fines should never be used, and restitution and restoration only as measures of discipline or to instil respect for property rights. Children placed by the courts under the care of private agencies or institutions should remain under the jurisdiction of the court, which should require reports and retain the right to visit. The administrative work of placing neglected and dependent children in family homes should be undertaken by the court only in the absence of other suitable agencies to do so.

Probation and Supervision. The probation staff of the juvenile court should be appointed by the judge from a list secured by competitive examination but subject to approval by a supervising board or commission. The pay of the probation officer should be sufficient to attract good men and women, comparable with the pay of social workers in other fields. A case load of not more than fifty cases to each probation officer is the proper standard for good work. The cases of girls and of boys under the age of twelve years should be assigned to a woman officer. Boys over twelve years should be assigned to men. A probation period of from six months to a year will afford a good test of whether probation is a proper method of handling the case. All the principles of good probation work discussed in the chapter on that subject should be kept in mind in connection with juveniles. In rural communities probation work may be advantageously combined with other types of social service. The important thing is that every resource of science and the human personalities interested in children and trained for their service should be brought to bear intimately and skilfully upon these wayward children.

Supervision of the work of the probation officers should be exercised by a state commission or board or by a special officer created by law in some department of the state. This supervision should be advisory both to the probation officers and the court as to all the features of their service, but with power to compel keeping of prescribed records and making periodical reports to the state supervisory authority.¹¹

¹¹ *Juvenile Court Standards*, Children's Bureau Publications, No. 121 (Washington, D. C., 1923).

Records. Every juvenile court should have a record system providing for two kinds of files: (1) a file of the necessary legal records; (2) the social records of the case covering the investigation and physical and mental study of the child, and a record of the treatment given by the court and probation officer. Only so can a constructive plan of treatment be made for the welfare of the child.

Annually these records should be studied for the statistical information they afford in order to provide a basis for comparison with other courts and thus enable the court to learn from its work how better to perform its task.

RESULTS OF THE JUVENILE COURT

Unfortunately statistics are not adequate to enable us to say just how efficient the work of the juvenile court has been in correcting delinquent tendencies in juvenile offenders. We have no records to show how many of the children who were handled by the old criminal court went wrong and how many were saved. We have a few figures on the results of the juvenile court. In the Boston Juvenile Court from 1906 to 1916 from 34 per cent to 29 per cent were returned to the court during each of two five-year periods studied.¹²

In Massachusetts a study was made of 296 juvenile court boys on probation. Out of this number fifty-five were surrendered and committed to institutions. Of the 241 boys carried through the original probation without surrender and commitment, 60 per cent at the time of the study—nine years after they were placed on probation—had had no subsequent court record. A further study of the boys after they had been four years beyond the jurisdiction of the juvenile court showed that only 22 per cent had acquired records as adults. Thus 78 per cent of the entire group had been free from an adult criminal record. A more recent study of 923 boys from the Boston Juvenile Court who had been referred to the Judge Baker Foundation for study and recommendation showed that during five years after their treatment by the court and its officers 88.2 per cent of them had fallen into crime.¹³

The work of the juvenile court has suggested that older children might be handled effectively on the basis of juvenile court procedure. Hence in a number of large cities boys' courts and morals courts have been established to handle special classes of juvenile and older offenders, often by a somewhat modified criminal procedure.

Recently the American Law Institute has proposed The Youth Court Act for consideration by the several states. That proposal has grown out of the feeling that those between the ages of sixteen and twenty-

¹² *Harry Humphrey Baker*, Publication No. 1, Judge Baker Foundation (Boston), pp. 33, 34, 105.

¹³ *Glueck and Glueck, One Thousand Juvenile Delinquents: Their Treatment by Court and Clinic* (Cambridge, Mass., 1934), p. 151.

three should not be handled by the juvenile court, which is better adapted to younger children, but should be handled by a special court and by informal procedure approximating that of the juvenile courts. Youths of this age are still immature and should not be subjected to the rigid procedure of the criminal court or to the penalties provided by the criminal code.¹⁴ That is the theory on which this proposed legislation is based. Along with it the Institute has proposed also The Youth Correction Act, which provides for the set-up of machinery for handling the cases coming into the proposed youth court. The gist of the proposals for handling these cases is machinery for a careful study of each case plus special institutions and methods of caring for delinquents separate from the ordinary institutions and agencies for handling those convicted in the criminal courts. It is a half-way step toward the indefinite sentence and a board of treatment for all convicted criminals already discussed. Whether the states will take kindly to this suggestion remains to be seen. If they do, it will relieve the juvenile courts of the older cases that in some states now come before them.¹⁵

QUESTIONS AND EXERCISES

1. Trace in outline the history of the juvenile court.
2. Trace the development of the court (a) in this country and (b) in the rest of the world.
3. What are the fundamental principles of the juvenile court?
4. What proportion of the juvenile courts in the United States come up to the specification laid down by the Children's Bureau of a "specially organized" juvenile court?
5. Study the juvenile court in your community and evaluate it on the basis of the standards set out in this chapter.
6. Why is it important to have good records in the juvenile court?
7. Give the arguments for and against the proposal that juvenile court methods should be extended to the handling of adults.
8. Discuss the proposal that juvenile courts should be abolished and their functions taken over by the schools.
9. What sociological principles explain why the courts of this country have been so slow to adopt in practice the fundamental standards for juvenile courts?

¹⁴ Harrison and Grant, *Youth in the Toils* (New York, 1938), Ch. VII; *Youth in Crime*, American Law Institute (Philadelphia, undated); *The Forgotten Adolescent*, The New York Law Society (1940).

¹⁵ For details of the Youth Correction Authority Act see chapter on parole and indeterminate sentence.

Chapter XIX

PROBATION¹

Probation is designed to avoid the evil consequences of incarceration and yet throw about the delinquent the influences that may lead him to a life of social usefulness.

Probation may be extended to a delinquent either after sentence has been passed by the judge or without the passing of a sentence. In the first instance, sentence is suspended and the man is put on probation; in the second case, he is put on probation without sentence having been passed. The meaning of the term is that he is being tried out (*probo*, "I prove") to see whether he can live in free society without breaking the law.²

ORIGIN OF PROBATION

Massachusetts originated the practice of probation. As early as 1848 a Boston shoemaker, John Augustus, was asking the court to suspend sentence on young offenders and put them in his charge. About 1870 a French editor and sociologist, by name Girardin, published a series of articles in his journal, *La Liberté*,³ attacking the practical results of imprisonment and showing the necessity of a change in methods of treating first offenders. He urged that they be made the wards of the community, kept in their usual social relations in free society, but under careful supervision and training. Whether these articles were known to those who devised the probation system in Boston or not we are unable to say. About that time an old gentleman known as Father Cook, who is described as a practical philanthropist and a man of leisure, had become interested in the youths who were brought before the criminal courts of Boston. He attended the court regularly to find out whether

¹ Logically this chapter could have been placed equally well in Part V. It is placed here because in most cases probation is administered by the courts.

² "Probation is the term used in connection with the release of an offender under suspended sentence and without imprisonment, but under the oversight of a probation officer for a definite period of time and for the purpose of reclaiming him from evil courses. Parole is the term used in connection with the conditional release from a penal or reformatory institution after a period of incarceration therein." *Bulletin of the Prison Association of New York*, quoted in *Journal of Criminal Law and Criminology*, Vol. XIV, May, 1923, p. 140.

³ These articles were published in this periodical for June and July, 1868. In 1871 they were published in book form. (Letter to writer from P. Cornill, Ixelles, Belgium.)

among the young people arraigned there were any whose offenses were due to circumstances rather than to character, who were not yet hardened and who might, under proper guidance, reform. Taking pains to investigate each case, he soon made a place for himself with the courts as an unofficial adviser. He seems to have had remarkable insight into human nature, and frequently the judges accepted his judgment and placed young criminals in his charge. In this way scores of boys were saved from entering prison and through his friendly influence were restored to self-respect and usefulness. As a result of this work, in 1878 a law was passed requiring the appointment of a probation officer for the city of Boston. Fortunately the first appointment was a remarkable man named Edward H. Savage, who had formerly been chief of police and who was a most efficient probation officer for fourteen years. Two years later a law was passed permitting the aldermen of any other city in the state and the selectmen of any town to employ a probation officer. Unfortunately the various communities of Massachusetts were not prepared to take advantage of this wise permission, and therefore very little was done. In 1891 at the suggestion of Governor Russell a law was passed requiring the criminal courts throughout the Commonwealth to appoint probation officers and defining their powers and duties.

Since that date experience has justified the law, and changes have been introduced, such as increasing the number of officers and providing for women upon the force.⁴

The example of Massachusetts was followed only tardily by other states. In 1899 Rhode Island passed a law providing probation for both juveniles and adults, Illinois and Colorado legislated juvenile probation, and Minnesota the same year authorized county probation officers for minors.

Perhaps more than any other influence, the establishment of the juvenile court gave a decided impetus to juvenile probation. Wherever the juvenile court was set up, there was a direct incentive to establish juvenile probation. However, from that date the development of juvenile probation and probation for adults has gone on separately. The influence upon adult probation was rather indirect.

In England the origin and development of probation came later than in the United States. For some time prior to the passage of the Children's Act of 1908 a number of persons interested in the welfare of the young delinquents had tried to secure the hearing of cases against juvenile delinquents in courts apart from those of adults. As a matter of fact, by 1905 several of the larger towns of England had taken this step. At Birmingham the first separate court for children was established in April,

⁴ Lewis, "The Probation System," *Proceedings, National Conference of Charities and Correction, 1897*, pp. 38-42. For a more extended history of the development of probation in the United States see Chute, "The Development of Probation in the United States," Ch. X in Glueck. *Probation and Criminal Justice* (New York, 1933).

1905, and in connection with this court there was appointed the first probation officer in England for children.⁵ In 1907 was passed the Probation of Offenders Act. Under this law courts are empowered, despite the fact that an offense has been committed, to discharge those convicted either absolutely or conditionally. The law states that the court shall have regard, in considering whether discharge shall take place, to character, antecedents, age, health, mental condition, nature of the offense, and extenuating circumstances. They may discharge, under these circumstances, either after conviction or before. They may place the offender under the supervision of a probation officer or other person and may lay down conditions of probation. The act provided special probation officers for children. In England, however, as in the United States, the law anticipated in many parts of the country the consciousness of need.⁶

DEVELOPMENT OF PROBATION

By 1944 the District of Columbia, the federal government, and all but six of our states had legislative provision for adult probation. Before the outbreak of World War II most European countries, a number of states in South America, Asia, and Africa had such legislation.⁷ In many cases the laws were permissive, not mandatory. The United States and its possessions by the outbreak of the war, with the exception of Wyoming, had legislative provision for juvenile probation.⁸

• In 1943 there were said to be 4,300 paid probation officers in the United States, while nearly as many volunteers were used by the courts.⁹ These figures, however, are likely to mislead us as to the growth of probation. In most states that have probation laws the law is permissive rather than mandatory. Hence one will find in those states that only the courts in the larger centers, where the people have become conscious of the need of probation, actually have probation officers.

In the states where it has been tried out longer, probation is being used more widely. Thus in New York State the number of adults placed on probation increased from 2,852 in 1910 to 23,302 in 1927.¹⁰ In Massachusetts between 1900 and 1929 the number on probation increased five times, from 6,201 to 32,809, while commitments to institutions decreased. In Boston in 1918 probationers were to incarcerated prisoners as twenty

⁵ Ruggles-Brise, *The English Prison System* (London, 1921), p. 102.

⁶ Hobhouse and Brockway, *English Prisons To-day* (London, 1922), pp. 50-51.

⁷ National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole* (Washington, D. C., June 23, 1931), p. 152; *Attorney General's Survey of Release Procedures*, Vol. II, p. 26.

⁸ Personal letter of Charles L. Chute, Secretary, National Probation Association, to the writer.

⁹ *Better Times*, Apr., 1923, p. 19. Most of them were paid out of public funds, *Directory of Probation Officers of the United States and Canada* (National Probation Association, 1925); National Commission on Law Observance and Enforcement, No. 9, *op. cit.*, p. 152. MacCormack, *Social Work Year Book* (New York, 1943), p. 36.

¹⁰ Chute, *The Development of Probation in the United States*, p. 559; National Commission on Law Observance and Enforcement, No. 9, *op. cit.*, p. 164.

to one.¹¹ *The Attorney General's Survey of Release Procedures*, Vol. II, p. 38, reports that about one-third of those convicted and sentenced by state and federal courts of general jurisdiction in 1936 were placed on probation or given suspended sentences.

Probation for Women. Strangely enough probation developed later for women than for men. Women seem to have been considered less amenable to reformatory measures than men. Experience, however, has demonstrated that probation gives just as promising results with women as with men.

Probation for Children. Naturally the greatest development of probation has been in connection with the juvenile courts. The full significance of the almost universal use of juvenile probation in the United States is apparent when we recall that as late as 1884 in New York State—and in many other states more recently—for the lack of juvenile probation a boy would be sentenced to jail, or committed to a reform school.¹²

As a result of the extension of juvenile probation the old practice of fining children has been gradually dying out. Moreover, juvenile probation is rapidly displacing the old practice of a public reprimand by the judge when he did not wish to send the child to an institution.

We must not, however, be led to believe that all courts dealing with children's cases in the United States have adopted probation and have set up effective probation systems. In 1921 the Federal Children's Bureau reported that there were only 321 "specially organized" children's courts in the entire country. These were to be found chiefly in the large cities, while a majority of the smaller cities have neither children's courts nor effective probation service. Even less frequently are they found in the courts in the rural counties.¹³ Although no recent study of juvenile probation has been made for the whole country, it is probable that the situation has improved owing to the growing appreciation of the importance of well-trained probation officers.

Extension of Probation to a Larger Number of Crimes. As the good results of probation have been observed and the pressure upon the courts has increased, there has been a tendency to apply it to more kinds of crimes and not to limit it to first offenders.¹⁴ As late as 1925 Congress passed a law providing for probation in the district courts of the United

¹¹ Parsons, "The Tests of Probation," *Proceedings, Annual Congress of the Prison Association*, 1923, p. 152; *ibid.*, 1920, p. 36; National Commission on Law Observance and Enforcement, No. 9, *op. cit.*, p. 164.

¹² Folks and Towne, "Probation in the Juvenile Court," *Proceedings of the Academy of Political Science in the City of New York*, Vol. I (July, 1911), p. 682.

¹³ Chute, *Probation in Children's Courts*, Children's Bureau Publications, No. 80 (Washington, D. C.), p. 9.

¹⁴ Wade, "Some Aspects of Probation," *Bulletin of the National Society of Penal Information*, Dec., 1923, p. 20; National Commission on Law Observance and Enforcement, No. 9, *op. cit.*, pp. 153-155.

States.¹⁵ At present most states limit the discretion of the judge as to what class of criminal cases are eligible for probation. In general it may be said that those who commit crimes that society usually abhors or those found by the law-enforcing agencies difficult to handle under the statutory limitations of most states cannot be admitted to probation. These crimes fall roughly into five classes: (1) crimes of violence, (2) crimes involving use of a deadly weapon, (3) sexual crimes, (4) treason and similar crimes against the government, and (5) crimes carrying a certain penalty. Also in some states the recidivist is not eligible. These statutory limitations are often evaded by the courts by allowing a promising case to plead guilty to another crime on which there is no statutory restriction. It is generally recognized by penologists that probation should be based upon the personality of the convicted rather than upon the crime he committed. The discretion of the judge should not be hampered by such statutory restrictions. They do not aid him in making the right selections, and they do not hinder him from placing on probation those who should not be given probation. The most important aid to the judge in administering probation is not statutory limits upon his power but an adequate number of properly qualified probation officers to make pre-sentence investigations and to aid the court in coming to an intelligent conclusion as to whether the particular individual before him will probably make good on probation.

The most important development in connection with probation has been the effort to secure better-trained and more adequate staffs. In the courts that have had the longest experience with probation the tendency has been to supplant the unpaid or partly paid volunteers with well-paid and properly trained officers.

HOW PROBATION SHOULD WORK

To one who has not been engaged in probation work it is a little difficult to describe how the system actually works. Perhaps some conception of the problems and processes in probation can be conveyed by some cases. The following description by Thurston, who once was a juvenile probation official, will help in this matter:¹⁶

¹⁵ Chute, in *Journal of Criminal Law and Criminology*, Vol. XII, p. 564. After probation grew up in some of the states and numerous efforts to provide a probation system for the federal courts had failed, the federal district judges for a good many years followed the practice of suspending sentence in the case of some federal offenders. This custom was finally decided by the Supreme Court (ex parte U. S., 242 U. S. 27) as having no warrant in the law and stopped on the ground that to do so was an interference with the legislative authority inasmuch as it allowed the judiciary to perform the functions of the legislative body, and further was an interference with the executive authority to pardon. This decision affected over 2,000 persons on suspended sentence from these courts. The Court, however, suggested that the President might pardon such as he thought worthy. This was done. Public No. 596, Sixty-eighth Congress, approved, Mar. 4, 1925; Chute, *American Law Journal*, Vol. LIX, Apr., 1925, p. 279.

¹⁶ Thurston, *The Probation Officer at Work* (The New York School of Philanthropy, New York), pp. 3-8.

Otto Wengierski, a fifteen-year-old boy, was a thief. The evidence of the bookkeeper from the office where Otto had worked had convinced the Judge, and even Otto himself, that he had of late received more postage stamps from the bookkeeper than he had put upon the letters he had mailed. Otto had not openly admitted this to the Judge, but when the Judge asked him what he thought should be done with him he broke out: "Don't send me away, Judge, I won't do it again if you'll give me another chance."

"All right," said the Judge, "I'll take you at your word, and give you another chance to make good at home. But I will put you under probation to Officer Josephson, who will come frequently to see you and your father and mother and report to me how you are getting on. I expect you to talk things over with the officer and tell him all about how you came to do this. Report to him whenever he says, get a new job or else go to school, cut out stealing, and show me that you mean what you say. Remember, Otto, I expect to hear better things of you. Call the next case, Mr. Clerk."

As a bunch of boys, charged with loafing and shooting crap, crowds up before the Judge, to be followed in turn by boys who have stolen pigeons, girls who have kept bad company, girls who have stayed out all night, girls who have stolen bits of finery from the shops, and still other boys from rival groups who have fought in the streets and broken heads and windows, to be followed by still others, who have been habitually truant from school, who have upset push carts, broken into candy stores and slot machines, stolen junk, carried off booty from freight cars, and so on through the list of juvenile offenses, Officer Josephson and Otto go out of the court room together to begin their new relation of probation officer to probationer. Mother and father follow.

The boy had been arrested on complaint of his employer. During the three days before his appearance before the Judge, he had had a medical and physical examination by a doctor and a mental examination by a psychologist. His mother had been present at the mental examination and had willingly given many supplementary facts about herself, and about the birth, infancy, health, schooling, etc., of the boy, but of the boy's father and of the financial and other social problems of the boy, and the family she had told little or nothing beyond the fact that the father was not living at home and that the boy was.

After leaving the court room the probation officer explained to Otto and his parents what his duties as probation officer were, gave the boy a probation card which stated the conditions of his probation, made arrangements to see each of them alone soon at places convenient to them, and expressed the belief that whatever mistakes the boy had made could be avoided in future if they would all be open and honest with each other and all work together.

The personal talks of the next two days, together with a careful reading of the examinations made by the doctor and psychologist, showed these facts about the boy and his family:

That the father was lazy, given to sharp tricks in business, with no permanent job, not allowed by the mother to live at home on account of questionable personal habits and irregularity of income, but fond of Otto and rather admired by the boy for his smartness. Father and son often took luncheon together and often went to movies and cheap theaters whenever the father had money.

That the mother had taken up dressmaking to help keep the home together for Otto and his sister of twelve. That she was given to complaints about her hard lot, always hard up for money, took all of the six-dollar wage that Otto received, and continually urged him to try to get a job that would pay more.

That the little girl was the pet of all the others and at all costs must have good clothes and go to school. Otto had more love for her than for anyone else.

That Otto himself was of a bright mind, nervous organization, given to bad

personal habits, and led into bad recreational habits by his father, as well as familiarized with sharp business practices that were as near dishonesty as the law would permit. The stamp stealing experience that brought him into court was not his first experience at petty stealing. The others had not been detected.

In short, Officer Josephson found out that if he was to make effectual plans for his care of Otto while on probation he must consider not only the fact of his repeated stealing but at least these other facts:

1. His nervous organization and tendency to bad personal habits;
2. His active mind and need of recreation;
3. His broken home and divided loyalty;
4. The questionable moral and business example and ideals of his father;
5. The financial stress of his mother;
6. His love for his sister and his strong desire to help her and his mother.

The stealing by Otto was of course wrong, but it was more significant as a symptom of the physical, mental, social, economic, and immoral stimuli which together were driving him on toward repeated delinquent acts.

Therefore a good team game between the probation officer and Otto and his family must aim not only toward the prevention of further actual dishonesty by Otto, but also toward a wholesome adjustment of all the underlying factors in his personal and family life that, unless adjusted, would be likely to lead not only Otto but his mother and sister into further trouble.

Building upon the sound basis of all the essential facts in the case Officer Josephson was able gradually not merely to prevent further stealing by Otto but to help him to build up clean personal habits and better health, better balance in his recreation, sounder business ideals; to secure more regular contribution toward the family budget by the father; and finally, through the real interest in and love for both Otto and his sister by both father and mother, to bring about at least a formal and economic restoration of the father to the family circle.

Although the personal and social facts of importance back of each one of the thousands of other boys and girls who are brought into our Juvenile Courts no doubt differ somewhat in every case from those which Officer Josephson found in the case of Otto, the start in good probation must always be made in practically the same way, namely: by finding out all the important facts in the case and by starting out on an intelligent constructive plan of probationary care that takes all of these facts into consideration with an open mind toward the discovery and use of more facts as they appear.

A case illustrating the work of an adult probation officer will perhaps throw light upon the way in which his work is done:¹⁷

The boy of 19 was the second of nine children. He was a native of the city in which he was arrested. His family history was most discouraging. His mother, an inebriate and prostitute, had died in the County Hospital of tuberculosis, and had been treated for syphilis several years before the young man came to our notice. The father was a degenerate, shiftless and a drunkard. He had always neglected his family.

At the age of 9 years, the probationer had been turned over to his grandmother, a respectable woman, while three of his brothers and sisters were placed in an orphan asylum from which two of them had graduated into an Industrial School and a Reformatory. One child was feeble-minded and was confined in a Custodial Institution. The probationer, as disclosed by investigation, had grown beyond his mother's control at an early age, although remaining in school

¹⁷ Murphy, "How Probation Works," *Bulletin of the National Society of Penal Information*, Dec., 1923, pp. 14-19.

until he reached the eighth grade. According to intelligence tests, he was rated as of normal mental development. During his late adolescent period, he had developed into a corner lounge and an inveterate cigarette smoker. He had had several sex experiences of an unsavory character, and had contracted a social disease. Before coming to our notice, he had been in court on one occasion. We were asked to investigate him after his conviction for burglary. His work record, needless to say, was of little account. His recreational and mental interests previous to our contact with him had been anything but constructive or uplifting.

Despite this dark background, the probation officer, because of the young man's youth, his apparent attitude of repentance and his good health, recommended his release on probation. The Court, after some study of the problem, followed the recommendation.

The task of guiding this youngster into more acceptable ways of living was a delicate one. It was finally accomplished, however, through the coöperation of a boys' work agency and the young man's grandmother, a responsive individual. The first thing done was to find a suitable home, and work for which the young man was fitted. Having done these things, the officer induced the boy to save his money, clothe himself properly, and in that way stimulate his sense of pride and responsibility. He was later persuaded to attend church and gradually led away from his former companions and other demoralizing influences. He became interested in athletics at the boys' work agency where he resided and began to enjoy healthy recreational interests as a result. He finally gave up the use of cigarettes. In time he was induced to contribute toward the support of his grandmother, pay in restitution the sum of \$35.00, the amount lost by the complainant as a result of the probationer's offense, and as a climax to his good conduct, he paid out of his own earnings the funeral expenses of an aunt who died while he was still under supervision.

Three years have passed since this young man was discharged from active supervision. Contact is voluntarily maintained between the probation officer and the boy. He is working for a large railroad concern, holds a fairly responsible position, and is earning a steady substantial income. The solution of his difficulties lay simply in a readjustment of his relationships, and the guiding of his interests into constructive channels, and it was possible to do these things for him while he remained at liberty in the community.

From these cases it is apparent that the probation officer does his work like the physician or the school-teacher. He meets his problem and endeavors to apply all the good sense, information, and training he has to adjust the probationer to his situation. What he does depends upon his equipment to get the confidence of the probationer, change the environment, suggest new habits, pursue a course that will lead the probationer to adopt his suggestions, and bring to play upon him all the resources of the community to accomplish the desired change. Thurston cites a school principal who showed this adaptability to a situation. At the close of school on a Friday night he was told that an overgrown, ill-bred, stubborn boy had been so insolent to a woman teacher that she had dismissed him with the statement that he could never come into her class again until he apologized. The principal knew the boy well and was well acquainted with his home and friends. So interested was he in the welfare of his boys and girls that he bent every energy of body and mind and used all of the resources at his command for the welfare of these

children. This boy lived some distance from the school and came by train to attend. The principal took a train, called upon the grandmother, and explained to her the whole situation. The grandmother saw the girl friend of the boy, who in turn saw the boy, got him to tell her his story, and brought such pressure to bear upon him that on Monday morning he was back at school and apologized. He was unconscious of the machinery that had been set in motion to bring about this result, but the consequence of this action on the part of the principal was that this crisis in the life of the boy that might have meant dropping out of school and an entirely different career, was met by his skilful work. The successful probation officer exercises the same alertness and resourcefulness in the treatment of his cases.¹⁸

RESULTS

Probation has now been in operation long enough so that in fairness we may ask, what are its results? While we still need more careful studies than we have had, we fortunately have some figures that will help us to answer this question. In England, where probation is more recent than in the United States, but where they collect their statistics on crime for the whole of England and Wales, we have some indications of the results of its working. Ruggles-Brise reported that from 1909 to 1913 the percentage of revocation of probation orders had not averaged more than six.¹⁹

In the United States, while our statistics are not nation-wide, we fortunately have in two states very good probation commissions that have for a number of years exercised supervision over the local probation officers and have studied their problem.

Obviates the Evils of an Institution Experience. Among the early aims of probation were the prevention of contamination in a correctional institution for young offenders, first offenders, and those whose crimes involved mitigating circumstances. It was seen that the results of throwing such people into prison were so brutalizing and so often resulted in confirming the offender in a criminal career, that it was hoped through probation society could be protected and at the same time the evil results of correctional institutions might be obviated.²⁰

Socializes Criminal Procedure. The probation system properly administered can assist the judge in socializing criminal procedure. By careful pre-sentence investigations probation officers can provide the court with information concerning the convicted individual on which the judge may individualize the treatment with greater exactness. In some courts the judge does not pronounce sentence until he has before him a report

¹⁸ Thurston, *op. cit.*

¹⁹ Ruggles-Brise, *op. cit.*, p. 112.

²⁰ For an excellent statement of the psychological and sociological treatment in an institution and under probation see National Commission on Law Observance and Enforcement, No. 9, *op. cit.*, pp. 147-149.

from the probation officer. But the most recent and extensive study of the actual practice in the courts, the *Attorney General's Survey of Release Procedures*, showed that in the vast majority of the courts studied in 1936 this important function of the probation force was neglected.²¹ By careful supervision of those convicted and put on probation the criminal law is adapted to the needs of each individual.

Probation has also greatly simplified the problem of the court in domestic relations cases. Once the problem of what to do with a man who failed to support his wife and children was a puzzling one to the court. Under the law he had to be punished, but if he were sent to prison he could not support them and probably would be made worse than before. Now, under adult probation, he can be tried out under the supervision of the court, subject to the influence of a probation officer who may be able to impress upon him a sense of his responsibilities, thus saving the state the expense of his care and the support of his family.²²

Effects on Individual Delinquents and Their Families. What has been the effect of probation upon delinquents themselves? In the figures cited below it must be remembered (1) that save in Massachusetts none of these studies have gone beyond inquiring what happened after the expiration of the probation period; (2) that owing to laxity of supervision many violations were not discovered and recorded; and (3) that definitions of what constitutes violation of probation varies, not only with different jurisdictions, but also with different officers in the same jurisdiction. Hence the figures offered are not exact, but only approximate, and on the whole probably too favorable to probation.

In a study made by the Massachusetts Commission on Probation it was found:²³

A marked difference in the extent of subsequent court records is shown between the boys who were carried through the probation term and those who were surrendered and committed to institutions. Of the 239 boys carried through the original probation without surrender and commitment, 143 (60%) had no subsequent court record. Of the 55 who were surrendered to the court for misconduct while on probation and committed to institutions, 23 (42%) had no subsequent court record.

In Massachusettes in the adult cases classified under the general heading of "General Offenses," 59 per cent made satisfactory response during the probation period, 18 per cent made less satisfactory progress, and only 9 per cent failed and were surrendered to the court and committed by it to institutions. If there be added to this 9 per cent those who disappeared, 22 per cent may be counted as failures. In round numbers then, the Massachusetts experience shows that *about 78 per cent came through the probation period successfully*. Massachusetts is the only state

²¹ Vol. II, Ch. VI.

²² *Ibid.*, p. 20.

²³ *Report of the Commission on Probation*, Massachusetts Senate Document No. 431. Mar. 15, 1924, p. 31.

that has followed up carefully those who had been on probation over a number of years. The study of the matter in that state shows that 65 per cent of those on probation had no subsequent court record.²⁴

In Detroit from January 1 to September 30, 1922, only ten men who had been placed on probation on felony charges were brought before the judge for breaking the terms of their probation. Twenty-four more were sentenced for committing another offense after being placed on probation. In short, only thirty-four men out of 1,151 broke probation. This is not quite 3 per cent of those male adults who had committed state prison offenses. Among 2,825 misdemeanors above the age of seventeen handled during the year ending June 30, 1922, less than 3.5 per cent failed to keep the terms of their probation. During the first nine months of 1922 men who were placed on probation for offenses against property, in which they were ordered by the judge to make restitution, had repaid \$10,572.98. In addition it is estimated that instead of being a charge upon the state for their care in an institution, they earned for their families a total of \$463,818.55.²⁵

Chute is authority for the statement that a study of the New York State Probation Commission of 100,000 adults put on probation for the fourteen years ending 1921 showed that 77 per cent of those whose probation terminated during that period were successful. In Erie County, N. Y., a study in 1920 showed that of 200 consecutive cases placed on probation, approximately three and one-half years before, 81 per cent had been discharged as successful. Of those who had been discharged two and one-half years before, 72 per cent were still making good at that time.²⁶

From a study of a year's court cases affecting 682 women in Detroit, it was found that 303 were closed, 81 per cent as improved cases; 95 per cent of the whole number were not convicted again during the probation period; and 98 per cent were not committed on new charges.²⁷ Of these 682 women 31 per cent were felons and 65 per cent were misdemeanants, 20 per cent had previous police records, 5 per cent had been on probation before, and 27 per cent of the whole number had been pronounced abnormal by the psychopathic clinic. In a study made of 300 Jewish women by the Jewish Board of Guardians in New York City, it was found that the results were good. This study showed that 83.3 per cent of these probationers had been satisfactorily adjusted at the end of their probation. By "satisfactorily adjusted" is meant living under good home conditions, steady employment, and healthful recreation. In the follow-up of these cases, some of whom had been placed on proba-

²⁴ *Ibid.*, p. 27.

²⁵ Marsh, "Detroit Succeeds under a New Organization," *Journal of Criminal Law and Criminology*, Vol. XIV, May, 1923, p. 20.

²⁶ Chute, *Probation in Children's Courts*, pp. 7, 8.

²⁷ Forncrook, "Probation for Women," *Journal of Criminal Law and Criminology*, Vol. XIV, Feb., 1924, pp. 605-619.

tion in 1919, it was found that 62.2 per cent of them were still doing well at the end of 1922.²⁸

This is a very good record in view of the fact that those of the highest intelligence usually escape arrest and that mental tests given these women showed that some of them were of rather low intelligence; that they were arrested for disorderly conduct, vagrancy, and incorrigibility; that while 272 of them were literate, only 4 per cent of this number had a high-school education; and that 123 of them were venereally diseased.

Two other more recent studies may be cited. One is a study under my direction made by Reuben L. Hill of 2,819 probationers in Wisconsin, cases closed during 1933 to 1935. The other is the study made by the *Attorney General's Survey of Release Procedures*, Vol. II on probation. This study covered 19,256 cases in twenty-five probation units in sixteen states and the District of Columbia, from 1933 to 1935 inclusive. In the Wisconsin study 17.2 per cent had their probation revoked; in the other study, 19 per cent. In both studies there were additional cases in which the conditions of probation were violated but that did not result in revocation.²⁹

One must not forget in connection with these figures that the only study made of the conduct of probationers after the release from probation is that of Massachusetts. Consequently we may expect that the figures given for successful probation are rather high. More studies should be made of what has happened to those on probation in years subsequent to release from probation.

The Expense of Probation. The probation system not only saves men—it is cheap. In New York State the average cost for the support of a man in prison was \$555.72, while the total cost of one year's probation supervision was \$29.34; in Ohio the figures were respectively \$236 and \$32; in Massachusetts, \$350 and \$35; in Indiana, 300 and \$18.³⁰

During 1922 in New York State 39,706 persons were on probation. The total amount collected by probation officers from these probationers for family support, fines and restitution, amounted to almost \$2,000,000.³¹ For the fourteen years from October 1, 1907, to September 30, 1921, 233,100 persons were placed on probation in New York State. During this time the probation officials collected from probationers a total of \$5,504,212.39. Of this amount \$4,726,388.52 was collected from non-supporting and deserting husbands for family support; \$268,780.59 was collected for fines to be paid in instalments; and \$509,043.28 was collected

²⁸ Menken, "The Rehabilitation of the Morally Handicapped," *Journal of Criminal Law and Criminology*, Vol. XV, May, 1924, pp. 147-154. It should be noted that the whereabouts of forty-four were unknown and these figures are based on a total of only 254, forty-six of whom were still on probation Dec. 31, 1922.

²⁹ Hill, *Success and Failure of Adult Probationers in Wisconsin*, thesis submitted for the degree of Doctor of Philosophy in the University of Wisconsin, 1938 (ms.); *Attorney General's Survey of Release Procedures*, Vol. II, pp. 336-338.

³⁰ National Commission on Law Observance and Enforcement, No. 9, *op. cit.*, p. 168.

³¹ "The Cost of Probation," *Better Times*, Nov. 5, 1923, p. 13.

for restitution. In addition the probation officers supervised the payment under court orders of \$2,816,900.71 direct to probationers. In that state the tendency to use probation to collect payments from men who have failed to support their families has increased. Formerly they were sent to jail, and their families suffered for the necessities of life or became objects of charity.³² There can be no doubt that probation represents an enormous saving in money in those cases where it can be applied without danger to society.

CRITICISM

Probation has been severely criticized. It has been charged (1) that it often results in more regard for the delinquent than for the injured party; (2) that when applied to all first offenders without regard to mentality, personality, and previous history of the offender it results in recidivism; (3) that it is difficult to ascertain whether the delinquent is a first offender, and therefore repeaters often are admitted to probation to the injury of both the criminal and society; and (4) that probation officers are so inefficient that probation is a farce. Some illustrative cases cited below will point these criticisms and prepare us to appreciate the principles approved by actual experience that should govern probation.³³

Unwise Use of Probation. In 1915 Kocourek pointed out that if the probation law is made to apply only to first offenders, in the field of *crimes against property* of those injured only those will prosecute who feel that the gain through restitution will be greater than the trouble and expense involved. The result is that "the probation system tends to make a victim of the person injured in favor of the wrong-doer." He argues that when the first offender knows that he is likely to be admitted to probation and that the difficulties of conviction are great, and that even if he is convicted the court may not order restitution, he is more likely to take the chance than if he knew that probation is impossible. The gist of Kocourek's argument is that in all such cases the deterrent effect of punishment is largely eliminated and society is left at the mercy of cunning criminals. The limitation suggested is that the probation system should be so guarded that it "does not for the purpose of reforming the offender, inflict an evil on the person injured, and does not by its leniency encourage the commission of crimes."³⁴

The evils that result from the use of probation for certain *mental defectives* is illustrated by the following:³⁵

³² *Journal of Criminal Law and Criminology*, Vol. XIV, May, 1923, pp. 144-147.

³³ Perkins, "Mental and Moral Problems of the Woman Probationer," *Mental Hygiene*, Vol. VIII, Apr., 1924, pp. 506-521.

³⁴ Kocourek, "An Unconsidered Element in the Probation of First Offenders," *Journal of Criminal Law and Criminology*, Vol. VI, May, 1915, pp. 14, 15, 117.

³⁵ Helbing, "When Should Probation End, or, The Misuse of Probation," *Seventeenth Annual Conference of Probation Officers*, Syracuse, New York, Nov. 10, 1924.

E. W. was committed to the house of refuge on Randall's Island in October, 1921, on a conviction of burglary. The investigation showed that he was probably a defective delinquent. At the time he was seventeen years old he had been before the children's court on numerous occasions. He had also been in a corrective institution at three different times. Each time he had been paroled from the institution and twice while on parole he had been arrested for petit larceny, and each time placed on probation. This treatment had been given him in spite of the fact that after he arrived at Randall's Island a mental examination showed a mental age of only 9.5 years, with an intelligence quotient of 59. He was a problem within the institution on account of his low mentality although he usually behaved himself, was paroled, and within six months left home and wandered about the country. He was arrested charged with burglary, and convicted by the court. After his conviction the court requested a report from the superintendent of Randall's Island. This was given, showing the probability that he was a fit inmate for the State institution for defective delinquents. The probation officer transmitted this report to the court and yet in spite of it he was placed on probation. Within a week he left home again, a week later was arrested for burglary, indicted, convicted and again placed on probation. He again left home, was again arrested and convicted and was then sent to a reformatory.

This case of a mental defective is clearly one which should not have been admitted to probation, or else special oversight should have been provided. Moreover, the very fact that he had been in trouble so frequently before might have suggested to the court that he was not a proper subject for probation.

Probation is sometimes used for *repeaters*. The following is such a case.⁸⁶

An inmate of the House of Refuge had already been on probation several times for offenses and also had an institutional record. He was returned three times for violating his parole. After the last parole he was arrested charged with robbery with a gun, was indicted by the grand jury on several counts, and remanded to the county jail to wait trial. Then he pleaded guilty to one indictment. He was a boy who was exceptionally bright and came from excellent surroundings. The facts of his past record were before the judge when he pronounced the following sentence:

"I am going to send you to the County Jail for a term of six months. You have been in jail for four months and I will suspend sentence on the balance and place you on probation for that period."

It is evident that probation is not suited to such a case, although sometimes recidivists may be put on probation.

The result of such probation work is that those who are subjected to it are encouraged in the belief that no matter what they do they will not be severely dealt with.⁸⁷

Probation officers often fail to administer it in a way that will produce good results. This poor social practice arises from the *lack of qualifications in the probation officers, from an overload of cases, or from the*

⁸⁶ *Ibid.*, pp. 7, 8.

⁸⁷ *Ibid.*, pp. 10, 11.

lack of proper supervision. Says Chute, Secretary of the National Probation Association:³⁸

Criticism of probation work as poorly administered or undermanned is frequently merited.... There is not a probation office in the country, with two or three conspicuous exceptions, which has enough probation officers to give the careful attention to cases under supervision which they need. All courts need the services of both men and women probation officers.... The most important work of probation officers is in the field, visiting the homes of their charges; hence, they should have adequate clerical assistance.

PRINCIPLES OF PROBATION

Out of past experience with probation, certain tentative principles have emerged. These principles may be summarized as follows:

1. *Good probation work must be based on thorough investigation.* Unless this is done, persons will be placed upon probation who should be sent to an institution, and offenders will be sent to institutions who should be placed on probation. Poor investigation is illustrated by the following case:³⁹

A boy sixteen years of age was sent to an institution for petit larceny. The probation officer from whom he was committed reported that he had had him on probation on two other occasions. A careful investigation by the parole officer of the institution brought out a fact which the probation officer had not discovered, viz.: that while living in another city the lad had been arrested for robbery, had been placed on probation, and had also been placed in a reformatory. This was not known to the court when he was placed on probation the last time. It is clear that the probation officer of the city from which he came should in the very first instance have found out his previous history, before he was placed on probation the first time.

2. *Investigation and treatment must be individualized.* Each offender must be studied and treated as an individual. Different cases will require different methods of investigation, and the probation officer in attempting to correct the client's behavior must adapt his methods to the individual case. This principle condemns laws limiting the length of time adults may be kept upon probation. Uniform rules as to reporting to the officer and uniform conditions imposed upon every case (found in many of the early regulations for probation officers), violate this principle.

This principle has especial application to juvenile probation. Since the young offenders, if not corrected, will probably be serious problems as they grow older, it is important that each case be individualized both in diagnosis and in treatment.⁴⁰

3. *The term of probation should not be fixed in advance.* Probation should continue until the court and probation officer are convinced that

³⁸ Chute, "The Probation System—What It Is: What It May Become," *Bulletin of the National Society of Penal Information*, Dec., 1923, p. 11.

³⁹ Helbing, *op. cit.*, pp. 9-10.

⁴⁰ *Report of the Commission on Probation*, Massachusetts Senate Doc., No. 431, Mar. 15, 1924, pp. 37-38.

the probationer will conduct himself well or else that probation is hopeless. Every careful study of the results of probation has demonstrated the soundness of this principle.⁴¹ At the present time in most states the terms of probation are too inelastic.

A state-wide study in Massachusetts showed that:⁴²

... a distinctly better showing is made by the boys who were on probation for a period of one year or longer than by the boys on a shorter period,—tested by the number committed to institutions. It is probable that the cases of more serious bad behavior were the ones kept on probation the longer time, but that disadvantage was so far overcome as to make their showing in subsequent careers notably better.

4. *The home and neighborhood must be used to rehabilitate those on probation, especially juvenile offenders.* If home conditions have a great deal to do with the making of juvenile delinquents, then proper home conditions, when the juveniles are on probation, are of the greatest importance. In Massachusetts boys from broken homes and boys from homes with drinking parents showed poor response to probation. Probation failed in only 16 per cent of the boys from homes with both parents present, and no bad conditions; in 30 per cent of those from broken homes, and 40 per cent from homes with drinking parents.

Neighborhood conditions, too, have much to do with the success of probation. For example, probation of those from favorable neighborhoods showed failure in 35 per cent, of those from unfavorable neighborhoods 67 per cent.⁴³ When both home and neighborhood are bad the prospect of successful probation is still poorer. Some of the juvenile courts have found it well to change the home and neighborhood environment when the boy is put on probation.

Numerous illustrations might be given of how delinquents have been affected by a change in home and community life. Miriam Van Waters cites such a case which, while unusual, illustrates the point:⁴⁴

Sally is a girl of sixteen. She is married, has a healthy well cared-for baby, a ranch with chickens, pigs and goats, a pretty bungalow, an automobile, a husband with fine mustachios. When she was first brought to Juvenile Court she was twelve, a frail child with spinal curvature, twitching movements and weak heart. Her intelligence was dull average. She had temper tantrums, beat and scratched her mother, who was an invalid, swore at her stepfather, who was blind, refused to go to school, was cruel to animals, even putting them to death, was incorrigible in three private homes. Study of this case revealed a girl with craving for dressing up and showing off; there were other symptoms of self-love and infantile desires which her mother's illness and stepfather's harshness had fostered. Placed in a twenty-four hour school, her behavior was a source of anxiety to her teachers, her profanity, temper and running away seemed to yield to no one save the superintendent, and in periods of jealousy this woman

⁴¹ *Ibid.*, p. 47.

⁴² *Ibid.*, p. 35.

⁴³ *Ibid.*, pp. 45-47.

⁴⁴ Van Waters, *Youth in Conflict* (New York, 1925), pp. 188-189.

could not control her. She was not a success at the school, yet gained there a true picture of her home situation and herself (for several weeks she was under daily observation by the psychologist), physical restoration, knowledge of gardening and home-making, and a genuine basis for self-confidence.

Suddenly she ran away with a young man, a chance "pick-up." He kept her overnight, then took her to her parents, who literally threw her out. She was again brought before the court. Obsessed with the idea that she was to have a child, she pleaded to be allowed to go to her sister, a young married girl of twenty. In this home Sally saw happy married love for the first time in her life. She became devoted to her sister's baby and gave up her fancies of being pregnant. There were some backslidings, but nothing catastrophic until Sally, with final gesture of independence, ran away with a rancher whom she captivated in a simple visit, as is the short-cut custom of the delinquent girl. They were married immediately. Over fourteen months have passed. Sally is a patient hard-working mother and wife; every trace of waywardness has vanished as if it had never been. Her devotion to child and husband, gentleness with animals, can be observed daily, together with her pride in her worldly possessions. She is a normal member of her community; her past history could not be guessed by the most experienced.

In this case, in spite of the fact that the young sister could offer little supervision, or wisdom of treatment, and in view of the fact, that Sally's conduct amply justified a correctional school commitment, the court placed her in the one situation where it was possible for her to enter normal, constructive human relationships. Her career in the average institution would probably have resulted in rioting, further delinquency, and a fixed psychopathic personality.

5. *Both diagnosis and treatment must take account of physical and mental conditions.* By knowing the facts concerning certain physical and mental conditions, the probation officer is better equipped to handle his cases with understanding and with greater hope of success. The juvenile courts in some of our large cities were the first to provide such physical and mental examinations.⁴⁵ Increasingly it is being recognized that every court placing men on probation should have facilities for physical and mental examination in certain cases. Yet, these measures are no substitute for the art of handling the case properly by judge and probation officer; they are only aids.⁴⁶

6. *A definite plan should be formulated for the client and adapted to his needs, as experience with him shows necessary.* Says Miriam Van Waters:⁴⁷

Probation officers in coöperation with the clinic, should develop a definite program, or plan of life, for the child, which secures proper social relationship with home, school, church, neighborhood, playground, industrial and social service groups. There should be a fixed policy of supervision of work of the individual officer, and frequent conferences with all those who come in contact with the child. Results of probationary treatment should be checked up every

⁴⁵ Cooley, "Current Tendencies in Adult Probation," *Proceedings, National Conference of Social Work*, 1918, p. 144.

⁴⁶ Menken, "The Rehabilitation of the Morally Handicapped," *Journal of Criminal Law and Criminology*, Vol. XV, May, 1924, pp. 147-148. See Glueck and Glueck, *One Thousand Juvenile Delinquents* (Cambridge, Mass., 1934), p. 166.

⁴⁷ Van Waters, *op. cit.*, p. 263.

six months, or more frequently, and methods revised as conditions change. If treatment is not working, some carefully deliberated new plan should be made. It should be remembered that intelligent probation service is restricted to a small proportion of juvenile courts. It has not been applied to the majority.

7. *The program should include coöperation with all the agencies of the community which can help.* Many a probation officer has found success, where before he experienced only failure, by using the information available in other social agencies in the community concerning the family of his client. Sometimes it was the school, sometimes the church, often the family welfare agency or some other organization in touch with this individual or family. The same thing is true with respect to securing the coöperation of other agencies in the matter of treatment. Often the probation officer can successfully invoke the assistance of the church, the Boy Scouts, the Big Sisters, or some group of men or women who can render excellent supplementary aid to his own efforts.⁴⁸

8. *Probation officers should be trained.* The grave difficulty with most of our probation work is that we have so many untrained officials, especially in the adult field. These officials have the most delicate and important task of any one in the community, yet how frequently they have never had any chance to learn to work according to the best standards known. Says Van Waters: ⁴⁹

The probation staff should be well trained social workers of good personality. The minimum requirements of the Juvenile Court Committee on Standards should be followed. The fact that entirely disqualified persons serve as probation officers is the chief cause when probation fails to reduce delinquency. Probation is doomed if served by ill-trained, half-educated, incapable officers, or if it overloads with too many cases its good, well-trained officers, or if the probation office is administered politically. The personnel of the probation office is the most important single consideration in a community program for treatment of juvenile delinquency.

9. *Probation officers must be well paid.* If probation officers are to be trained people, they must be paid more than a farm laborer or a ditch-digger. Says Chute:⁵⁰

Probation officers as a class are among the most underpaid of all public servants. In many courts, because of the newness of the probation office, the anomalous situation prevails that court attendants, and clerks receive higher salaries, whereas the qualifications for the work do not compare with those needed for probation officers. Probation officers require good education and special training and experience along sociological lines. They must have ability to meet all kinds of people, and they must be persons to whom can be entrusted authority and responsibility. Their work ranks with other important professions, such as teaching and even the law, and should be paid as well.

⁴⁸ *Proceedings, National Conference of Social Work, 1918, p. 145.*

⁴⁹ Van Waters, *op. cit.*, p. 261.

⁵⁰ Chute, "The Probation System—What It Is: What It May Become," *loc. cit.*, pp. 5.

Chief probation officers in the large courts have positions of great responsibility, their work is on a par with that of the judges, and they should be paid accordingly.

10. Supervision of the offender should not be lax nor yet too close. According to Van Waters:⁵¹

One of the obstacles to permanent adjustment of delinquent girls is too close supervision. Constant watchfulness, ready-made plans, excessive advice, free help in time of trouble, a kind of fussy, brooding anxiety tends to make a girl on probation either helpless or rebellious. She cannot cast off her crutches. To workers, who know the dearth of good probation work throughout the country, this may cause a smile; but there is vast difference between slackness, ignorance, indifferent neglect, which one sees constantly among probation officers and social workers, and an intelligent, sturdy policy of faith and non-interference with natural processes of growth.

11. Each case must be handled by what is known as case-work methods. To quote Van Waters again:⁵²

A girl abandoned in infancy by both parents, adopted into a worthless family, abused and forced into a laundry before she was fourteen, seduced by a moving picture director when she tried to sell a scenario, given by the director to one of his friends, who in turn passed her on to those to whom he had business obligations,—stage hands, men of different race; finally after six months of passive delinquency, brought before the court at fifteen, infected, bewildered, apathetic, exhausted. The same girl at twenty, married, a careful mother, a member of the best social circles, wife of a prominent man, a woman who possesses charm, taste, gentleness of manner, insight and an ability to serve other young people whom she has an especial gift in reaching—is one illustration of successful case work.

12. Probation should be extended to rural communities. In this connection Chute says:⁵³

In most states there is still need for pioneer work in the extension of probation from its application to perhaps two or three of the larger city courts to all the cities and rural districts of the state. Good probation work is especially needed in the rural courts, because of the lack of other social agencies.

In recent years a number of the states have made commendable progress in extending probation to the courts in the rural districts. Outstanding among those with local probation units under state supervision are New York and Massachusetts. Four states having probation carried on directly by a state agency are Rhode Island, Vermont, Utah (for juveniles only), and Wisconsin (for the whole state except for Milwaukee county). The value of a probation officer in rural communities is illustrated by the following cases:⁵⁴

⁵¹ Van Waters, *op. cit.*, pp. 194-195.

⁵² *Ibid.*, p. 191.

⁵³ Chute, "The Probation System—What It Is: What It May Become," pp. 11-12.

⁵⁴ New York State Probation Commission, *County Probation Officers* (Albany, N. Y., 1912), pp. 9, 10.

(Case A) A gang of four boys in a village in Eastern New York broke into five houses and a barn, where they stole valuables and committed other depredations. The property holders urged that the boys and especially the leader of the gang be committed to a juvenile reformatory. On the report of the probation officer who found that their motive was chiefly mischief and that they were not vicious, the court placed them on probation.

The probation officer required them to attend school regularly and to keep good hours, and treated them in a friendly, helpful manner, which they appreciated. As a result of his advice and oversight their conduct became satisfactory. Their probation expired four or five years ago, and at the time of our last inquiry, two of the boys had good employment, one was in high school, and the other was attending college.

(Case B) A shiftless father who seldom worked steadily and was often drunk, was placed on probation by a court in Southern New York, upon condition that he keep employed and provide properly for the support of his family. As a result of the probation officer's oversight the man obeyed the requirements. At the end of the probationary period the wife told the probation officer that she had not been so happy or so well provided for during the past five years as while her husband was on probation.

If instead of being put on probation the man had been sent to jail, the county would have had to maintain him in idleness, and his family would probably have had to be supported by charity.

13. *Either state supervision or state probation is necessary for effective work.* In states where probation is carried on by the local unit under the court, and where over a long period a state probation commission has succeeded in developing good probation work in all the units, like New York and Massachusetts, local administration with state supervision works well. Such a plan, however, requires a long time to develop. On the other hand, in the states like Wisconsin, where it has been difficult to get county boards to provide the necessary funds for paid probation officers, a state probation department for adults has worked well. The entire state has been covered, the force of officers has grown rapidly, uniform standards have been applied, and judges have come to see the value of probation. The result in that state has been such an increase in probationers as no one ever hoped for.⁵⁵

14. *Probation should be indeterminate.* Probation, like imprisonment and parole, to-day is suffering under the limitations put upon it by the statutes. In most of our states probation must be terminated when a man has finished his maximum sentence. Certain offenders may not be admitted to probation, and there is a great difference between judges even in the same state in admitting men to probation. The present chaos in this field could be reduced to order if, after the determination of guilt, the court were to hand over to a treatment board all prisoners, allowing this body to determine whether the man should be put on probation or placed in an institution. Remove all limitations upon the exercise of

⁵⁵ Chute, *State Supervision of Probation* (Albany, N. Y.). For standards see *Journal of Criminal Law and Criminology*, Feb., 1923, pp. 601-604; *Juvenile Court Standards*, Children's Bureau Publications, No. 121 (Washington, D. C., 1923).

authority by this body; then responsibility will be placed definitely upon this group to handle the man in accordance with the facts revealed by a careful investigation. Allow them to keep the man on probation as long as they think necessary and give them the power to send him to an institution if probation is not fitted to his case.

CAN SUCCESS OR FAILURE ON PROBATION
BE PREDICTED?

It is now generally recognized that the success or failure of both parolees and probationers depends on the proper selection of cases. Are there any criteria useful to determine the characteristics of an individual which make for success or failure on parole and probation? Consider the attempts that have been made to answer this question as to probation. The pioneer work on this problem is a study by Monachesi of the University of Minnesota on the basis of 1,515 cases (896 juvenile and 619 adult cases) from the records of the probation office of Ramsey County, Minnesota, for the three years, 1923 to 1925 inclusive. He found that those who left home early, whose parents were criminals, who had little education, who did not attend church, who were reared in poor residential districts, who smoked, were lazy, dishonest, masturbated, were sexually loose, and who had no associates in crime were poor risks. Some of these criteria are subjective and therefore are invalid. A more careful study is that by Reuben L. Hill, referred to above. His conclusions based upon a critical study of 2,819 adult probation cases closed by the State Parole and Probation Bureau of the Wisconsin Board of Control during the years 1933 to 1935 showed that the adult in Wisconsin who made good on probation was a man over thirty, married, living in a rural area, preferably a farmer or a professional man owning some property, and having no previous criminal record. He was sentenced for a short period by a court that used some discretion in choosing probationers, was one who continued in the same occupation during probation, and was employed at the termination of his probation period. Conversely the failure on probation was a man under thirty, single, separated, or divorced, living in a small town, an unskilled laborer or a clerk with no property, having a criminal record, convicted of fraud or forgery and sentenced for a long period, probably changing occupations when placed on probation, moving about frequently, and unemployed at the termination of his probation.⁵⁰

The study covering the largest sample of probationers was one made by the *Attorney General's Survey of Release Procedures*, based upon a study of 19,171 closed cases from the files of twenty-four probation units in sixteen states and the District of Columbia, 1933 to 1935 inclusive. Only six factors associated with outcome on probation were studied, and it was recognized that there were probably many others that should be

⁵⁰ Hill, *op. cit.*, Ch. VII.

taken into account. This study indicated that steadiness of employment during probation was the most important of these six factors. The presence or absence of a previous criminal record was of almost equal importance. Of less consequence were age, race, and marital status. Nature of offense was least important and was not statistically significant in this study. Yet the last three were associated with the outcome on probation in significant proportions. Employed are better risks than unemployed; married than single, separated, or divorced; whites than Negroes. Nativity was not found to be important. Those with no previous offenses do better than repeaters.⁵⁷

Incomplete in the analysis of all possible factors as all these studies may be, they point out certain factors that judges and probation officers may well take into consideration in placing individuals on probation.

QUESTIONS AND EXERCISES

1. A man has been found guilty of stealing food for his starving family. He is called before the judge before being sentenced and is told that he will be required to work and pay back the value of what he has stolen and the costs of prosecution, and will have to report once a week to an officer of the court. Is that parole or probation?
2. Assume the same circumstances, but the judge passes sentence as laid down in the law for such an offense, and then suspends the sentence and lays upon the man the same conditions. Is that parole or probation?
3. Trace in outline the origin and early development of probation (a) in England and (b) in the United States.
4. Why have not all courts in the states that have probation laws permitting the use of probation put on probation officers?
5. From the procedure of the probation officer in the case of Otto Wengierski make an outline of the qualities desirable in a probation officer.
6. Suppose that you were deputed by a body of citizens to appear before a county board from which body the money would have to be got for the support of a trained probation officer, what are the arguments you would make to induce them to vote the money? (Outline a brief of the arguments.)
7. If you were a judge with the power to decide whether you would use probation or not, under what conditions would you refuse to employ that method with delinquents?
8. How could the evil complained of by Kocourek have been obviated?
9. What principles does the case of Otto Wengierski illustrate?
10. If you were preparing to become a probation officer, what kind of training would you think necessary?
11. What advantages has a system of local administration under state supervision? a state department of probation actually handling the probationers turned over to it by the court?
12. What are the dangers of indeterminate probation? the advantages?
13. What are the advantages of providing for limiting the function of the court to trying the accused and leaving to a board the determination of the treatment of the convicted? the dangers and difficulties?

⁵⁷ *Attorney General's Survey of Release Procedures*, Vol. II, Ch. X.

Part V

PENAL AND CORRECTIONAL INSTITUTIONS

Chapter XX

THE EVOLUTION OF PUNISHMENT

Primitive man shares with the animals the emotion of resentment at injury. Man's superior intelligence, however, has led him to refine his methods of reaction and therefore to multiply the devices with which he punishes injury. In general among primitive men death, mutilation, banishment, and compensation have been prevalent. The ties of blood that held men together in a group had some mitigating influence upon the severity of punishment. On the other hand, ignorance and fear led often to barbarous treatment of the offender and the passionate punishment of those whose offenses were not serious so far as the welfare of the group was concerned. As we shall see, fear within the group of the effects of the violation of customs and beliefs resting on ignorance and fear of the gods or of ill luck often inspired savage action against the offender.¹

RETRIBUTION

When punishment was the reflexive reaction to injury, the wronged individual imposed upon the offender such punishments as lay in his power and as were suggested by his own sense of injury. He or his kindred were judges of the severity that should be visited upon the offender. *Retribution* describes the measures taken by an individual or his kin to avenge an injury and those taken by one group against another for injuries suffered by a member or members of the first at the hands of an individual or individuals in the second. This has been called "blood vengeance." The duel is a survival of this primitive method of settling disputes, and the legal duels in our courts are echoes of those primitive methods.

Blood Vengeance. Illustrations of the working of blood vengeance are available from many different sources. According to Tacitus, adultery among the ancient Germans was punished by the injured party. He says:

¹ Sims has adroitly said that the thought and society of primitive man are "...virtually organized conspiracies against change." *The Problem of Social Change* (New York, 1939), p. 5.

"Adultery is extremely rare among so numerous a people. Its punishment is instant and at the pleasure of the husband. He cuts off the hair of the offender, strips her, and in the presence of her relations expels her from his house and pursues her with stripes through the whole village."²

The Hebrew Scriptures provide a number of illustrations of private blood vengeance. One of these concerns Joab, the leader of King David's army. Abner in a battle slew Asahel, Joab's brother. The latter, in spite of King David's covenant of peace with Abner, slew Abner in revenge "for the blood of Asahel, his brother."³ Howitt, in describing the native tribes of Southeast Australia, says: "Individual offenses such as theft were dealt with by the individual wronged, by spear or other weapon."⁴ Until recently the practice of blood vengeance prevailed in the Southern Highlands of this country.

The law of blood revenge operates among primitive peoples not only between individuals within a tribe or clan, but also between tribal groups. Says Tylor: ⁵

The relation of private vengeance to public war is well seen among rude tribes such as inhabit the forests of Brazil. When a murder is done within the tribe, then of course vengeance lies between the two families concerned; but if the murderer is of another clan or tribe, then it becomes a public wrong. The injured community hold counsel and mostly decide for war if they dare; then a war party sets forth in which the near kinsmen of the murdered man, their bodies painted with black daubs to show their deadly office, rush foremost into the fight. Among neighboring tribes the ordinary way in which war begins is by some quarrel or trespass. Then a man is killed on one side or the other and the vengeance for his death spreads into blood feud and tribal war ever ready to break out from generation to generation.

Other instances are found in the Bible.⁶

Perhaps under the social organization of some primitive societies private vengeance served a useful purpose. Russell, in describing its working among the Pima Indians of our Southwest, says: "The law of vengeance operated to prevent homicide. It led to the elders teaching the people to exercise restraint." Under this instruction, Russell says the youth abhorred bloodshed with one exception: to kill the convicted sorcerer was meritorious.⁷ Tylor also testified to its public value.⁸ But he also pointed out in the passage quoted above its disadvantages.

² Tacitus, *Germania*, Ch. 19.

³ II Samuel, 2, 3.

⁴ Quoted in Thomas, *Source Book for Social Origins* (Chicago, 1909), pp. 779, 780. See also Tylor, *Anthropology* (New York, 1889), p. 415. For the Southern Highlanders see Campbell, *The Southern Highlander and His Homeland* (New York, 1921), pp. 110-115.

⁵ Tylor, *op. cit.*, p. 418.

⁶ Judges, 19, 20.

⁷ *Annual Report of the American Bureau of Ethnology* (Washington, D. C., 1908), p. 198.

⁸ Tylor, *op. cit.*, p. 415.

LIMITATIONS ON PRIVATE VENGEANCE AND BLOOD FEUD

Consequently certain limitations on these bloody procedures grew up. Among these are the right of sanctuary, individual and group composition for crime, later the Truce of God, and finally the control of crime by the state.

1. **The Right of Sanctuary.** The staying of the hand of the private avenger, until such time as the question can be settled as to whether the injury was accidental or of set purpose, was met by the device of the right of sanctuary. It is found in many societies but may be illustrated from incidents in the Bible. Adonijah, one of the sons of David, attempted to make himself king in the last days of his father. Another son, Solomon, however, with the connivance of his mother, seized the power by a *coup d'état*. Adonijah feared for his life and fled to the sanctuary, where he took hold on the horns of the altar.⁹ Joab, who had followed Adonijah, did the same thing.¹⁰ This protection afforded by the altar rested upon the belief in the holiness of the Deity. This holiness was something magical that had a certain potency attached to it and thereby gave rise to the special taboos that were applicable to sanctuaries.¹¹

2. **Individual Composition for Crime.** In addition to the right of sanctuary in primitive society, the custom grew up that offending individuals and their families might make settlement with the injured and his family. How this practice originated we can only guess, but we find it in ancient times. As long ago as the Code of Hammurabi (c. 2380 B.C.) the practice of individual composition was established. In this code composition related chiefly to property damage and not to personal injuries. However, at least in one case it was a substitute for the death penalty. In case the thief had nothing with which to pay, he was to be put to death.¹²

Among the Hebrews a similar limitation existed, except that it extended also to personal injury. If two men contended and one smote the other with a stone or with his fist with the result that his opponent was badly injured but did not die, the one who injured him was required to pay for the loss of his time and to cause him to be thoroughly healed. If a man's ox gored a person to death and if the ox had been known to be dangerous and the owner had not kept him in, the ox was to be

⁹ I Kings, 1:49-53.

¹⁰ See I Kings, 2:28. This reference, however, shows that the right of sanctuary was not always respected by the king, since Solomon ordered that Joab be slain even at the altar, probably on the ground that he was a murderer, since he had killed Abner.

¹¹ Robertson Smith, *The Religion of the Semites* (London, 1901), pp. 161, 162.

¹² Code of Hammurabi Sections 8, 9, 13, 106, 107, 112, 120, 124, 160, 161. Hastings-*Dictionary of the Bible*, Extra Vol., Article, "Code of Khammurabi."

killed and the owner put to death unless the family of the injured was willing to take instead a ransom.¹³

In Arabia the transition from blood vengeance to compensation has been observed. The nomad tribes outside of cities hold rather strictly to the blood feud, while those living in the towns find that it is necessary to practice compensation for injury and thus prevent the evil results of the blood feud.¹⁴

The same principle appears in the early Saxon laws known as the "Dooms of Alfred." If a man knocked out the front tooth of another man, he was to make compensation in the form of eight shillings, or, if it was an eye tooth, four shillings, or if a molar, fifteen shillings. These dooms provided in detail for the various kinds of injuries that might be suffered.¹⁵

The same provisions are to be found in the Salic law of the Franks. Compensation was provided in detail for practically every sort of crime from theft and robbery to murder. These compensations were graded according to the rank of the person injured. For example, the compensation for the murder of a free Frank or a barbarian living under the Salic law was 800 denars. In case of composition for death, the money was to go half to the sons of the slain father and the other half to the nearest relatives on both the mother's and the father's side. If there were no relatives, the money was to go to the "fisc."¹⁶ This practice is almost universal among ancient peoples. It is referred to by Homer in the case of Ajax, who reproached Achilles for not accepting the offer of reparation made to him by Agamemnon. Ajax reminds Achilles that even a brother's death may be composed by a payment of money and that the murderer, having paid his fine, may remain at home free among his own people.¹⁷ It is said that one of the scenes depicted on the shield of Achilles was a dispute about a death fine. Among the ancient Germans, Tacitus says, "even homicide is atoned by a certain fine in cattle and sheep; and the whole family accepts the satisfaction to the advantage of the public weal, since quarrels are most dangerous in a free state."¹⁸ The fine for homicide is constantly referred to in the laws of Edgar and Athelstan in early England. In Sweden this composition for homicide was called *kinbote*.¹⁹ This same practice of composing difficulties by means of a payment of money is to be found among many pre-literate peoples.²⁰

When a member of one group injured a member of another group, then the blood feud lay between the two groups. Here, again, composition

¹³ Exodus, 21:18, 19, 30.

¹⁴ Tylor, *Anthropology* (New York, 1889), p. 416.

¹⁵ Cheyney, *Reading in English History* (Boston, 1908), pp. 81, 82.

¹⁶ Henderson, *Select Documents of the Middle Ages* (London, 1903), pp. 176-189.

¹⁷ Ninth Book of the *Iliad*.

¹⁸ Tacitus, *Germania*, Ch. 21.

¹⁹ Kocourek and Wigmore, *Primitive and Ancient Legal Institutions* (Boston, 1915), p. 124.

²⁰ For details see Lowie, *Primitive Society* (New York, 1920), Ch. 14.

was resorted to for settling the matter. Thus in the Doms of London we find the responsibility of a man's kindred for a thief recognized in the reign of Athelstan, 925-940 A.D.²¹

3. **The Truce of God.** In the disturbed period of the Middle Ages, when bloodshed was rampant, the church undertook to regulate homicide. The rude barbarians, even though they had been converted to Christianity, were still following the old blood feud resulting in constant warfare. For nearly a half-century before it succeeded in getting the Truce of God accepted, the French church had been endeavoring to curb through its councils the riot and disorder of the barons and princes in that part of Europe. At first as the protector of the poor she decreed a special peace for the unarmed clerk and the industrious husbandman. The Council of Charroux in Poitou first gave utterance to this position in 989. The church obtained the powerful support of William V, of Aquitaine at the councils of Limoges in 994 and Poitiers in 999. In this early period of development the Truce of God was ineffectual except in affording some protection to churches, priests, and laborers. The effectual establishment of the truce was accomplished by the Council of Tuluges in 1027, in which the regulation was reduced to writing and sanctioned by an oath. According to this regulation all warfare was to be suspended from noon on Saturday until Monday. All monks, clerks, bishops, and churches were to be permanently exempt from ravages by the ruthless barons. Gradually the protection it afforded was extended as to classes of people, and the time of the truce was lengthened. Thus in 1041 the church in Aquitania extended the truce to the period from Wednesday evening until Monday morning, from the beginning of the Advent to the Octave of the Epiphany, and from the beginning of Lent to the Octave of Pentecost, and applied it to the feasts of the Holy Cross, the three great feasts of the Virgin, those of the twelve Apostles, and those of a few other saints. From there it spread to surrounding countries, William, Duke of Normandy, adopting it in 1042. Gradually it spread not only over all France, but probably into Germany, Italy, Spain, and England. Special clauses were later added for the protection of pilgrims, women, merchants, monks, and clerks, and also to prevent the robbery of the cattle and agricultural implements of the peasant. In 1095 the Council of Clermont proclaimed the weekly truce for all Christendom and added a clause requiring the oath of obedience to the truce by all men above the age of twelve. The Truce of God reached its height in the twelfth century, when it was sanctioned both by local and by papal councils. In the thirteenth century it began to decline owing to the growth of the power of the king in the various countries, which led to the establishment of civil order. There is no question that during this disturbed period the Truce of God played a very important part in

²¹ See Lee, *Source Book of English History* (New York, 1905), pp. 88-91.

limiting the predatory and bloodthirsty practices of the recently converted barbarians of this part of Europe.²²

4. **Control of Crime by the State.** With the growth of a strong civil government these methods of controlling the turbulent elements of society were supplanted gradually by the establishment of civil officials and agencies to deal with the problem of crime. While the kings labored to establish more effective means of punishing crime, they could not be neglectful of the customs that had grown up and become thoroughly established in the attitudes of the people. Blood feuds would break out occasionally and sometimes defy even the power of a strong king. Gradually civil tribunals took the place of religious agencies and of private and group revenge. The revenue that was produced by the administration of the law was a significant factor in the transference of this administration into a function of public law, whereas previously it had been a matter of arbitration of the dispute, the public authority acting as arbitrator.²³

SOCIAL DEFENSE BY EXPIATION

Coördinate with retribution for personal injury is expiation by the eradication of an impious criminal to avert ill luck or the wrath of supernatural beings from the group to which the offender belongs.

Religious Basis of Expiatory Punishment. The rôle of superstition and religion in establishing punishments for crimes that are public in their nature is seen in the period when these acts are believed to constitute a kind of infective influence that menaces the welfare of the group itself. Says Saleilles:²⁴

The infliction of the punishment becomes a sort of religious ceremony. It is solemnized by formalities, sanctioned by law and ritual, imposing one ceremony for the verdict, and another for its execution. An assembly of the tribe is summoned for the imposition of the punishment; thereupon the execution takes place according to established rites after the manner of an expiatory sacrifice. It is in fact a sacrifice offered to the gods of the tribe; the victim is not an enemy to be put to death, but one to be immolated to satisfy the demands of the gods. The tribe does not claim the right to kill for the sake of killing; to appease the vengeance of the gods is the excuse for the immolation.

One must not be led to the hasty conclusion that in primitive society private vengeance is the characteristic mode of punishing crime, while in civilized societies crime is a public matter. While injurious acts are divided in modern law into torts and crimes, the former to be prosecuted by the individual injured and the latter by the state itself, the fundamen-

²² Article, "Truce of God," *Encyclopædia Britannica*, 9th Edition; Geisler, *Ecclesiastical History* (New York, 1857), Vol. II, pp. 200, 201.

²³ Rusche and Kirchheimer, *Punishment and Social Structure* (New York, 1939), pp. 10-11.

²⁴ Saleilles, *Individualization of Punishment* (Boston, 1913), p. 29. (Copyright by Little, Brown and Co., 1913. Reprinted by permission.)

tal basis of this division is to be found even in pre-literate societies. *Social defense grew out of this desire to purge the group from the infection of crime, which threatened to bring down the wrath of the deity upon all.* Consequently, as Oppenheimer has said, "In primitive communities, the notion of crime blends with that of sin."²⁵ Sin and crime both came to be looked upon as mysterious, infectious things, which could be transmitted to children by their parents and could be contracted by contact with the guilty. Consequently an act of sin, which was likely to contaminate the whole group, threatened to destroy its innocent members because it involved the curse of the god upon all who might be infected.²⁶ As an illustration recall the case of Achan, who took as the spoil of war a Babylonian garment, two hundred shekels of silver, and a wedge of gold, which he hid in his tent. Upon the confession of his sin, Israel destroyed not only Achan but his children and his possessions.²⁷ Moreover, the primitive conceptions of the purpose of punishment in ancient Israel attach to the graver, longer-recognized crimes. Thus, murder is thought to defile the land. The defilement can be removed only by expiation.²⁸

Philosophic Basis of Expiation. While the desire to justify the group in the eyes of the offended deity explains some of the punishments of pre-literate man, in the course of time a utilitarian theory was formed, with the result that expiation became an end in itself; that is, expiation restored the balance of the moral universe disturbed by crime. This did not result, however, until man had philosophized about the matter abstractly and until guilt had become a metaphysical incident of a social conception. Philosophy then completed the process of making expiation an end in itself. Such philosophers as Kohler, Denaistre, Kant, and Hegel put the capstone on this philosophical conception.²⁹ The practice of eliminating certain criminals persisted in the culture, but the rationalization of the practice changed from a religious (expiatory) to an abstractly philosophical basis. The disappearance of the practice had to wait until other elements grew up in the culture, for example, humanitarianism, economic demand for the labor of the criminal, and so on, which were incongruous with killing him.

BANISHMENT

In addition to retribution and expiation, even in pre-literate societies, banishment was a common method of getting rid of an offender. This seems to have taken the place of capital punishment in certain kinds of crimes, chiefly the breaking of customs and the less serious violations of

²⁵ Oppenheimer, *The Rationale of Punishment* (London, 1913), p. 188.

²⁶ Westermarck, *Origin and Development of the Moral Ideas*; Robertson Smith, *op. cit.*, p. 163.

²⁷ Joshua, 7:1-26.

²⁸ II Samuel, 21:1-14; 35:33.

²⁹ For an extended discussion of the views of these philosophers see Oppenheimer, *op. cit.*, pp. 179-200.

religious taboos. We catch a glimpse of the way in which outlawing a man worked among the ancient Hebrews. The brilliant young warrior David incurred the suspicion of King Saul, who tried to kill him. David fled and betook himself to the rough part of the country and hid in the cave of Adullam. We are told, "And every one that was in distress and every one that was in debt and every one that was discontented gathered themselves unto him; and he became captain over them."²⁰

Often outlawry was equivalent to death. None might give the offender shelter or food, and he was in the position of an enemy to all outside groups because he was a stranger. Consequently, unless he could find companions he was in danger of perishing either from want or from hostile men.

POETIC PUNISHMENTS

By this term are designated those punishments adapted to the particular crime committed which society inflicts upon an offender. Thus the thief often had his hand cut off. The false witness either had his tongue torn out or pierced, or in later times he wore around his neck the effigy of a tongue. The crime of rape was often punished by emasculation. In later times the village scold was punished by having a gag put in her mouth. Mutilations of all sorts, such as cutting off the ears, the upper lip, and various members of the body were used to cause the person to be odd-appearing and thus to excite the derision as well as the pity of those about him. A baker who sold short-weight loaves was often punished by having bread tied around his neck, and a fishmonger convicted of selling bad fish was paraded with a collar of decayed smelts hung over his shoulders. In the Middle Ages a heretic who advocated Judaism was fed entirely upon pork. The Baptists of Switzerland were punished by being drowned. Branding with a certain letter was also used as a poetic punishment. This is illustrated in Hawthorne's *Scarlet Letter*. The head of an offending female was sometimes shaved or she was stripped and whipped through the streets. In England after writing became common the thief was branded with a "T" on the forehead.²¹

These poetic penalties have a psychological basis not altogether different from that out of which grew sympathetic magic. As in the latter it was believed that to perform an act upon an effigy would in some unaccountable way produce the desired effects upon the person represented by the effigy, so it was believed that a punishment of a nature allied to the offense committed would cure the offender of his criminal tendencies. This class of punishments has largely disappeared because it has become recognized that they do not have the effect intended. On the contrary, they often beget a sense of injustice and so result in further crimes.²²

²⁰ I Samuel, 22:2; 25:10.

²¹ Ives, *History of Penal Methods* (London, 1914), pp. 54-57.

²² See Parmelee, *Criminology* (New York, 1920), pp. 364, 365.

PUNISHMENT BY CURSES, MAGIC, INCANTATIONS,
AND FORMULAE

Many pre-literate peoples have the notion that words carry a certain potency. Names often determine the destinies of the persons who bear them. We evidence the survival of this feeling in refusing to name our children after opprobrious characters in history. No one would think of naming his baby Judas Iscariot, Benedict Arnold, or Jezebel. For a similar reason, early peoples believed that curses carried in some mysterious way their own fulfilment.

Faris tells of a strapping young warrior of the Upper Congo in Africa who had come under the influence of foreign ideas and who therefore had become indifferent to some of the native taboos and had violated some minor point. When this was called to his attention he was quite unrepentant. One of the oldest women of the tribe, indignant at his action, set off to find him. She followed him to his hut, pouring out upon him a stream of invective. He attempted to evade her by going into the hut, but she crouched at the door still crying out her curses. He retreated into an inner room, but she only raised her voice. Finally he went to the door, hesitated there a moment, and then turned and ran off into the forest.³³

As David fled from Jerusalem for fear of his son, Absalom, who was in revolt against him, Shimei cursed the fleeing king, "and thus said Shimei when he cursed, 'Be gone, be gone, thou man of blood and base fellow; Jehovah hath returned upon thee all of the blood of the house of Saul in whose stead thou hast reigned; and Jehovah hath delivered the kingdom into the hand of Absalom thy son; and behold thou art taken in thine own mischief because thou art a man of blood.'" That David felt the power of this curse is shown by his action when his lieutenant Abishai said to him: "Why should this dead dog curse my lord, the king? Let me go over, I pray thee, and take off his head." David replied, "Because he curseth and because Jehovah hath said unto him, Curse David; who then shall say Wherefore hast thou done so?"³⁴

Magical incantations were also used to produce evil results by what has come to be known as sympathetic magic in persons against whom one had a feeling of resentment for injury done. Frazer cites a Malay charm of this sort, "Take parings of nails, hair, eyebrows, spittle, etc. of your intended victim, enough to represent every part of his person, and then make them up into his likeness with wax from a deserted bees' comb. Scorch the figure slowly by holding it over a lamp every night for seven nights and say: 'It is not wax that I am scorching; it is the liver, heart and spleen of So-and-so that I scorch.' After the seventh time burn the

³³ Quoted in Kocourek and Wigmore, *Primitive and Ancient Legal Institutions* (Boston, 1915), p. 154.

³⁴ II Samuel, 16:5-14.

figure and your victim will die."³⁵ A similar idea seems to be connected with the ordeal provided in the Mosaic law for the trying of a wife accused of unfaithfulness.³⁶

Thus it appears that the practice of punishment by cursing might be a private matter or a public one. The oath is a survival in our penal system of this practice. However, in the case of any offense that was conceived to have a bearing upon the community's welfare, capital punishment was carried out by group action.

CAPITAL PUNISHMENT

This punishment might take any one of many forms. Stoning was a common method among the ancient Hebrews and some other people. Beheading, burning, spearing to death, impaling, throwing from a height, administering poison, and many other methods were employed. In short, authorities have cited over thirty such methods which have been found in use among various peoples.³⁷

PUBLIC RIDICULE

From primitive societies of all ages up to the present time public ridicule has been a means of punishment. The force of it in primitive societies can be appreciated if one remembers that among the Eskimos it is common for a man who has been injured to call a public meeting at which he recites or sings of the conduct of the offender in such a way as to make him ashamed. The offender may defend himself by reply in kind. The audience judges of the contest by its approval or disapproval.³⁸ This method is employed among other peoples.³⁹ Fear of ridicule is said to be so strong among the Winnebago Indians that men will commit suicide rather than submit to it.⁴⁰ Beccaria urged the limitation of infamy as a punishment in his *Crimes and Punishments*. While this method of punishment has been eliminated from the law, it still remains as a method of social control. Beccaria believed that infamy and ridicule should be maintained for fanatics. In former days it was involved in such punishments as the public pillory, stocks, and hanging. To-day it inevitably attaches to any punishments approved by public sentiment.

dents of this problem have emphasized the changing character of punishments correlative with the social and economic changes in a society.⁴¹ For example, they cite the fact that class differentiations led to gradation of fines according to status and to the substitution of corporal punishment for fines in the cases of indigent offenders,⁴² or again, that the intensity and extent of corporal punishments vary inversely with the demand for laborers. For instance, the fifteenth century witnessed an overabundant labor supply and concomitant harsh measures designed to curb the desperate efforts of the unfortunates to gain a livelihood. The latter half of the sixteenth century, however, was a period of labor shortage and of relaxed punishments. In times of stress, death itself was felt to be insufficient as a measure to deter others from offending. Luther, for example, during the Peasants Revolt in Germany held that rulers should not content themselves with execution alone, but should pursue, beat, strangle, hang, burn, and torture the mob.⁴³

Later it became profitable, especially in England, to incarcerate offenders and to exploit them commercially. The prisons and gaols became factories, and the system prevailed until the mechanical advancements of the Industrial Revolution rendered the practice unprofitable. Other ways in which economic interests had reverberations in the forms of punishments of offenders are seen in the cessation of transportation to colonies when it was no longer an asset to the mother country and in the abandonment of slavery as penalty in economies not geared to slavery.

But the emphasis of Rusche and Kirchheimer chiefly upon the economic conditions as determinents of penal theory and practice is unfortunate. It is like the emphasis of some biologists upon heredity and of some sociologists upon social organization as the sole factor of crime. Both are examples of a half-truth being as bad as a lie. The practice and theory of the treatment of the criminal depends not only on the economic situation but also upon the whole cultural configuration and upon the social organization. For example, when the Church was the dominant social organization, it influenced the penal system. Its penitential system, long applied by the canonical courts, gradually penetrated the secular system of punishment. Certain of the priests were the only learned men of the times. They were versed in the Canonical and Roman law. They had a decided influence upon the teaching and practice of criminal law. The first correctional institution for juveniles was founded by Pope Clement XI in 1704. Many of the punishments for crime characteristic of the period of the Church's ascendancy, and even of later periods, were bodily borrowed from the penitential system of the Church.

Also it should be remembered that some of the Pope's were pioneers in introducing the prison system. John Howard in his *Appendix to the*

⁴¹ Rusche and Kirchheimer, *op. cit.*, p. 5.

⁴² *Ibid.*, p. 9.

⁴³ *Ibid.*, p. 22.

*State of Prisons*⁴⁴ describes and gives a drawing of the New Prison in Rome built by Pope Innocent X in 1655. The very idea of correction rather than retribution has its roots in the penitential system of the Church. Even the tortures characteristic of both the Church and of secular punishment were so far as the former was concerned for the purpose of reforming the sinner.

The humanitarian spirit that came gradually to displace the horrible punishments of Church and state was not born of economic conditions only. It grew out of the whole cultural complex of the times. The gentle spirit of the Renaissance played its part. The Gospels read by the people with their teachings of democracy, love of fellowman, and of forgiveness had their influence on the changed attitude towards the criminal.

Moreover, the political organization of late medieval and early modern times, resting as it did upon a class society, with its noble and commoner classes, accounts for some of the harshness with which criminals were treated. That system, with its noble and villein, fathered as it was by the economic system of land feudalism, was mothered by the disturbed political and social conditions following the breakdown of Roman rule and incident to the gradual transformation from tribal to civil society.

In short, penal practices and theories are a part of the whole cultural configuration of society. While the correspondence is not perfect between the different elements in the culture, it is close.

QUESTIONS AND EXERCISES

1. In what sense was the *lex talionis*, or "an eye for an eye, a tooth for a tooth, stroke for stroke, burning for burning," a limitation on retaliation?
2. What influences have led us to feel that the *lex talionis* is an outgrown theory of punishment?
3. Point out the social advantages of right of sanctuary, of composition of injury, of the Truce of God. Have we any survivals of these measures?
4. Are punishments more or less numerous in a society composed of different races or nationalities than in a homogeneous society? Why?
5. Why has capital punishment given way to other forms?

⁴⁴ (London, 1784), pp. 72, 73.

Chapter XXI

CAPITAL PUNISHMENT

One of the oldest of our penal institutions is capital punishment. Killing the offender was a common penalty in the system of private vengeance, was also practiced in group vengeance, and was the only means of wiping out the danger to the group in case of a serious violation of the taboos, when an act was considered impious.¹

EVOLUTION OF THE DEATH PENALTY

It is difficult to reconstruct the early history of capital punishment, but we can see its psychic and social rooting in the reaction to injury on the part of the individual injured or that of the group whose member was killed and in the superstitious fear of the group that an impious act by a member would call down the wrath of the ancestral spirits or of the god upon the whole group. Out of the latter arose public concern with the criminal within the group. Reference has already been made to the destruction of Achan and his family because he had appropriated the spoils of war which were believed to be sacred to the God of the Hebrews.² It is probable that the burning of a harlot by the Hebrews was a means of turning aside from the group the wrath of God.³ Capital punishment under the Hebrew law probably arose in the same way for other crimes, for instance, adultery (Leviticus, 20:10; 19:20-22), bestiality (Exodus, 22:19; Leviticus, 18:23, 20:15, 16), blasphemy (Numbers, 15:30; Leviticus, 24:11-16), breach of the ritual (Numbers 4:15, 20; II Samuel, 6:7), witchcraft (Exodus, 2:18), kidnapping (Deuteronomy, 4:7), cursing father or mother (Exodus 21:17; Leviticus, 20:9), striking parents (Exodus, 21:15; Deuteronomy, 21:18-21), rape (Deuteronomy, 22:25). Witchcraft is a capital offense among some pre-literate peoples.⁴

¹ Robertson Smith has said that in early society "we may safely affirm that every offense to which death or outlawry is attached was viewed primarily as a breach of holiness; for example marriage within the kin and incest are breaches of the holiness of the tribal blood which would be supernaturally avenged if men overlooked them." *Religion of the Semites* (London, 1901), p. 163.

² Joshua, 7:1-26.

³ Leviticus, 21:9; Genesis, 38:24.

⁴ Gilento, "Of Crime and Punishment in New Guinea," *Asia*, Apr., 1923, p. 277.

METHODS OF CAPITAL PUNISHMENT

Beating. In ancient Assyria a mace was used to crush the skull.⁵ It was also employed in Judea in the time of the Maccabees (II Maccabees, 6:19, 28, 30).

Beheading. Beheading was not sanctioned by the Mosiac Law but was frequently practised among the Assyrians, Persians, Greeks, Romans, and many others.⁶ It seems to have been practised in ancient Egypt (Genesis, 40:19) and in ancient Israel, as illustrated by the fact that Ahab's sons lost their heads by the command of Jehu (II Kings, 10:6-8). It was the method whereby John the Baptist was dispatched by Herod (Matthew, 14:8, 10; Mark, 6:27). The Romans used it as a method of capital punishment for Roman citizens condemned to death, and it is probable that Saint Paul died by this method. It is still used in parts of the Far East and was revived by Hitler in Germany. The following description indicates the elaborate preparation and professional technique sometimes employed in this form of capital punishment.⁷

The next day I heard so much talk of "execution" that I decided to stop work long enough to see it. The Siamese made a sort of holiday of it. This was to be a three days' festival. Thirty-six men in all were to be put to death, twelve a day. Squatting in an open pavilion, with all their relatives and friends squatting about them, they were given their last meal. All sorts of food and delicacies were brought, and every one concerned had a "grand feed." At the appointed hour, the procession formed to walk through the town from the pavilion to the execution-grounds, which were about a mile away and near the palace. The sheriff was the official head of the procession, but before him walked a man with a large bell, which he swung up and down. The prisoners followed with a line of police on each side. The friends and relatives walked outside this line or brought up the rear. I stayed near the head of the procession. When we got to the execution-grounds there must have been a thousand people, gathered in a great space before a grove of palm-trees. They politely yielded to the relatives and friends of the prisoners the positions from which the view would be best. I found myself a place from which I could see everything.

Twelve banana-leaves were laid in a line, equal distances apart, across the center of a clear space, which was three or four hundred feet each way. The twelve prisoners sat cross-legged on these. Behind each of them was a stake with a crosspiece to which their elbows were tied. They were handcuffed but their hands had some play. Back of the stake and crosspiece was a higher stake still. The use this was to be put to I found out later. The prisoners were given cigarets and every one of them began to puff hard. When they were all well tied the sheriff came up to each in turn and, stooping, picked up handfuls of mud from the ground. He plastered it first in one ear and then in the other. He did this, I was told, so they would not hear the executioner when he came up behind them. Then he pushed their heads over and put a small spot of mud on the backs of their necks. All the time, even with their heads bowed, they kept on smoking.

⁵ Layard, *Nineveh and Babylon*, p. 468, quoted in Hastings, *Dictionary of the Bible*, Vol. 1, p. 523.

⁶ *Ibid.*, p. 523.

⁷ Charles Mayer, "Wild Beasts on the China Sea," *Asia*, Apr., 1923, p. 251.

When all twelve men were mud-plastered and bent over, a signal was given and out came the executioners, twelve of them, dancing and brandishing long straight swords above their heads. They were dressed in bright red, their *sarongs* caught up to look like trousers and their faces painted in stripes and blobs of red and yellow. They took their places, one behind each prisoner. The crowd was gesticulating and laying bets as to which executioner would do the neatest job. Another signal was given. The swords made a fancy swirl in the air and all descended at once. They halved the blobs of mud, cut almost through the necks but did not quite sever the heads from the bodies. This was left for a second set of executioners, who finished the job and set the heads on the sharp high stakes behind. The audience was quite still while the blows were being struck. When the heads were set up, some of the women screamed and ran away. I looked at the head nearest me; a faint line of cigaret smoke was curling out of the nose. I had had enough.

The twelve men that died that day were all members of the same gang. They had tortured a rich Chinaman, pulling out his nails and roasting his feet until he told where his treasure was hidden. They stole it and then killed him. When I heard the bell ringing the next day, I was careful not to find out what the prisoners had done.

Burning. Burning was a method of death penalty practised among some peoples. Achan was burnt with fire. A priest's daughter, guilty of fornication, was to be burned (Leviticus, 21:9). This punishment was also visited upon one guilty of incest with the wife's mother (Leviticus, 14). The Philistines threatened to burn Delilah, Samson's wife, and her father's kindred if she did not solve the riddle that Samson had propounded to them (Judges, 14:15). Nebuchadnezzar, King of Babylon, roasted two false prophets in the fire, probably for inciting rebellion (Jeremiah, 29:22). That it was a common method in Babylonia is indicated by the story concerning the fiery furnace and the three Hebrew children (Daniel, 3). King Esarhaddon burned a king alive.⁸ Antiochus Epiphanes, in attempting to force the Jews to give up their religion, put them to the test of eating swine's flesh. Seven brothers with their mother were shamefully treated by the king, who after maiming one of them "commanded to bring him to the fire, being yet alive, and to fry him in the pan" (II Maccabees, 7:5).

Cutting Asunder. Both mutilating the body until death ensues and the cutting or sawing of people in twain are found in Biblical and other literature. Thus King Nebuchadnezzar threatened the Chaldean soothsayers if they would not make known to him the interpretation of his dream: "Ye shall be cut in pieces and your houses shall be made a dunghill" (Daniel, 2:5; 3:29). Hazael, King of Syria, executed men by putting them under sledges with iron spikes (II Kings, 8:12; 10:32, 33; Amos, 1:34). It is probable that the Ammonites were also subjected to this treatment (II Samuel, 12:31; I Chronicles, 20:3). This method of punishment is referred to in Hebrews, 11:37, where it is said that some of the Christians were sawn asunder. David executed the people in one of

⁸ Quoted in Hastings, *op. cit.*, Vol. I, 523. Cf Isaiah, 43:2.

the cities he conquered by putting them "under saws and under harrows of iron and under axles of iron and making them pass through the brick kiln" (II Samuel, 12:31).

Crucifixion. Crucifixion was commonly used by the Romans as a method of capital punishment for those not citizens of the Empire, although Verres crucified even Roman citizens in Sicily and Galba in Spain. The cross was probably a development of the stake on which criminals were sometimes impaled. It is thought that crucifixion originated with the Phœnicians, from whom it passed to the Greeks and Romans. It certainly was in use among the Phœnicians, Carthaginians, and Numidians. It is said that Alexander on one occasion crucified as many as 2,000 Tyrians. After the death of Herod the Great, it is reported that Varus crucified 2,000 rioters.⁹ Josephus says that Titus crucified so many Jews after the destruction of Jerusalem that there was neither wood for the crosses nor place to set them up.¹⁰ It appears that the Jews did not practise crucifixion at any time in their history.¹¹

Drowning. Drowning was a penalty in Babylonia for adultery, for being a bad wife, for incest with daughter-in-law, for deserting husband's house in his enforced absence if provided with maintenance, and for selling beer too cheaply.¹² This mode of punishment was practised also by the Jews and the Romans.¹³

Destruction by Wild Beasts. Tearing to pieces by wild beasts was employed by a number of ancient peoples. The ecclesiastical instance is that of Daniel, who was thrown into the den of lions.¹⁴ This practice is reflected in certain of the writings of the New Testament.¹⁵ It may also be referred to by Saint Paul when he says: "If after the manner of men I fought with beasts at Ephesus, what doth it profit me?"¹⁶ During the persecution of the Christians under Nero many of them suffered death in this manner.¹⁷

Flaying. Capital punishment by skinning alive was practised in ancient Assyria, in Persia, and in ancient Scythia.¹⁸

Hanging. In ancient Israel hanging was a mark of indignity practised upon the lifeless forms of criminals. As a form of execution it does not appear in the Mosaic legislation. It is probable that the chief baker of Egypt in the time of Joseph (Genesis, 41:13) was thus exposed to shame

⁹ Josephus, *Antiquities*, XVII.x.10.

¹⁰ *Jewish Wars*, V.xi.1.

¹¹ Hastings *op. cit.*, Vol. I, p. 528.

¹² *Code of Hammurabi*, Sections 109, 129, 133, 143, 155, in Hastings, *op. cit.*, Extra Vol., p. 595.

¹³ Hastings, *op. cit.*, Vol. I, p. 524.

¹⁴ Daniel, 6.

¹⁵ II Timothy, 4:17.

¹⁶ I Corinthians, 15:32.

¹⁷ Moeller, *History of the Christian Church* (London and New York, 1898), p. 78; McGiffert, *The Apostolic Age* (New York, 1909), p. 629.

¹⁸ Rawlinson, *Ancient Monarchies*, Vol. I, p. 478; Vol. III, p. 246. Herodotus, *History*, Book IV, Section 64; Book V, Section 25.

after being killed or else was impaled. Under Persian rule gallows were certainly used as a method of execution. The well-known case of Haman exemplifies this method (Esther, 2:23; 7:9, 10, 14). In later times it was largely used in England and on the Continent.

Impaling. Impaling the criminal upon a sharp stick was a common custom in Assyria. Usually this was done by having the stick penetrate the body just below the breast bone. It was also frequently used in Persia. Darius is said to have impaled 3,000 Babylonians.¹⁹ Impaling was also used among the Romans.

Precipitation from a Height. Throwing prisoners from the Tarpeian Rock at Rome was a method of execution used chiefly for slaves guilty of theft. It is said that Æsop, the famous writer of fables, was executed in this manner. During the Maccabean wars in Judea Jewish mothers with infants in their arms were thrown from the walls of Jerusalem (II Maccabees, 6:10).²⁰ Hebrew tradition has it that the Israelites precipitated 10,000 of the Edomites from the top of a rock (II Chronicles, 25:12). This method of execution was also used by Assurbanipal in ancient Assyria.²¹

Stoning. Stoning was the characteristic method of execution among the ancient Hebrews. It was applied both to men and to beasts who were to be judicially exterminated. The Hebrews used this penalty for the taking of the spoils of war by Achan, for adultery and unchastity, for blasphemy, for devination, idolatry, dishonoring parents, false prophecy, and Sabbath-breaking.²² The witnesses hurled the first stones and then were joined by other persons in the crowd. Among the Persians, prisoners were crushed by stones.²³

Among the Romans stoning was a military punishment that came to be forbidden by Constantine. It is said that Æschylus, the Greek tragedian, was condemned to suffer such a death for having written an irreverent tragedy, but the sentence was not executed. According to a law of Æthelstan, King of England in the tenth century, male slaves were stoned as a punishment for theft.²⁴

Strangling. Strangling was a form of punishment sometimes used among the Jews and neighboring peoples.²⁵ It seems also to have been employed by the Romans.²⁶

Smothering. Suffocation, a modification of strangling, was a common Persian method of dealing with offenders. Hazael, who was afterwards

¹⁹ Rawlinson, *op. cit.*, p. 477; Layard, *Nineveh and Babylon*, p. 205, cited in Hastings, *op. cit.*, Vol. I, p. 525. See also Ezra, 6:11.

²⁰ Wines, *Punishment and Reformation*, Revised Edition (New York, 1919), p. 68.

²¹ Hastings, *op. cit.*, Vol. I, p. 526.

²² See Joshua, 7:25; Exodus, 8:26; Deuteronomy, 22:21, 24; Leviticus, 24:10-24; I Kings, 21:10; Acts, 7:58; Leviticus, 20:6, 27; Deuteronomy, 5:10; 13:10; 21:21; Exodus, 31:14; 35:2; Numbers, 15:35, 36.

²³ Rawlinson, *Ancient Monarchies*, III, 247.

²⁴ Wines, *op. cit.*, p. 66.

²⁵ Robertson Smith, *op. cit.*, p. 418.

²⁶ Hastings, *op. cit.*, I, 527.

King of Syria, killed his master, King Benhadad, by taking the coverlet of the bed, dipping it in water, and spreading it on his face, thus smothering him (II Kings, 8:15). During the Maccabean wars Menelaus was suffocated by Antiochus by being thrown into a ditch full of ashes (II Maccabees, 13:4-8).

Other Methods. Other methods of execution have been used in different countries. Methods have varied with the people and with the times. After the invention of gunpowder shooting became a common method and is still retained for military executions. In a few states it also survives as a method of executing common criminals. With the development of modern civilization, however, most of the methods described above have become obsolete, except as war atrocities.

PRESENT-DAY METHODS

Hanging. Hanging, originally a public spectacle for the purpose of deterring spectators from the commission of crime, has become relatively secret, only the officials and newspaper reporters being allowed to be present in most counties. New York State in 1835 abolished public executions. By 1936 Kentucky and Missouri still permitted them.²⁷ This development took place because it had become apparent that public execution, instead of deterring people from crime, merely brutalized them and incited them to crime.

In this method of execution the victim stands or sits upon a trap-door in a scaffold built up ten or twelve feet from the ground. A noose formed by the lower end of a rope attached to a cross-beam above his head is placed about his neck. A black cap is pulled down entirely over his face and fastened around the neck. At a given signal from the officer upon the platform the executioner, usually stationed at some distance, pulls a rope, which releases the trap and allows the victim to fall through the scaffold for several feet. The fall usually breaks the neck and causes instant death. Occasionally, however, the neck is not broken, and then death occurs by strangulation. Once in a while the rope breaks and the victim must be taken back to the scaffold and the process repeated. Because of the slow death by strangulation and the occasional breaking of the rope, this method of execution is being supplanted by electrocution and other more certain and supposedly less painful methods.

Hanging was the usual method in this country until recently. New York was the first state to adopt electrocution and has been followed by fourteen other states, which have adopted this means of execution. In Utah the condemned man may have his choice of being hanged or shot.

Electrocution. Since the widespread use of electricity, electrocution has been introduced.²⁸ It is supposed to be less painful and not so distressing

²⁷ See *Time*, Aug. 24, 1936; *Life*, June 14, 1937, p. 91.

²⁸ For a description of the first execution by this method, see *Correction*, published by the New York State Department of Correction (Albany, N. Y., Jan., 1940).

to those who are forced to witness the death. The culprit is fastened by straps to a firmly built chair. Upon his head, which has been shaved, there is strapped one of the electrodes in a cap filled with a sponge soaked in salt water so as to make the contact close in order to prevent burning. The other electrode is fastened to the ankle. The current is then turned on at the switch by the executioner, left on for a certain number of seconds, and turned off. After a short interval it is again turned on and then turned off, this process being repeated as long as is necessary to produce death.

Asphyxiation. In recent years execution by asphyxiation in a lethal chamber has been introduced. Several states provide this method of execution. The victim is placed in an air-tight chamber to which pipes have been connected leading to a receptacle containing gas. After the victim has been placed within the chamber, the gas is turned on by the executioner. In Nevada since 1921 liquid hydrocyanic gas has been used. This causes instant death. While some of the public press strenuously objected to this method of execution as barbaric, other papers defended it. Experience indicates that this method is probably the "quickest and most humane method of putting a human to death." In hanging, men are frequently conscious from seven to fifteen minutes after the trap is sprung, and in electrocution it is frequently necessary to shock a man three or four times before he is dead. In shooting executions unconsciousness does not always come instantaneously with the riddling of the heart, but with lethal gas unconsciousness is instantaneous and death practically so.²⁹

Beheading. Death by the guillotine arose during the French Revolution. Beheading is retained as the method in France, still by the guillotine. This device is named after Dr. Guillotin, who invented it as a sure and practically painless method of execution. On September 25, 1791, a penal code was adopted that provided that the only mode of execution thenceforth should be beheading, a privilege formerly permitted only to the aristocracy, common criminals having been hanged. The invention of Dr. Guillotin was intended to be humane, since it reduced the pain of death "to a shiver." The device is something like a pile-driver with grooved posts, in the grooves of which runs a heavy axe, which severs the head. In the block beneath is a curved depression in which the criminal's neck lies. The blade descending strikes the neck from behind, and the head falls into a basket. At first the blade was set at right angles; later it was set diagonally in order to do the work better.³⁰

EXTENT OF CAPITAL PUNISHMENT

Capital punishment still remains as a penalty for criminals in most of the countries of the world. In the course of time, however, its application

²⁹ *Literary Digest*, Mar. 1, 1924, p. 17.

³⁰ Wines, *op. cit.*, pp. 57-60.

has been limited to the most serious crimes, and other forms of punishment have gradually taken its place.

While at the time of the arrival of the English colonists in America the English laws for the punishment of criminals were unusually severe, over two hundred crimes being punishable by death, the colonists did not adopt capital punishment for all crimes. In the New England colonies only twelve offenses were made punishable by death.³¹ This number, which to-day seems exceedingly large, soon was lessened. In the latter part of the eighteenth century a movement began to limit the application of capital punishments to fewer offenses. Ohio, in 1788, and Pennsylvania, in 1794, restricted capital punishment to cases of murder alone. Early in this century fifteen of our states and twenty-five foreign countries had abolished the death penalty. In 1944 there were only six of our states that had abolished capital punishment.³² Nine that once had abolished it, have reinstated the death penalty. Likewise the different states, while on the whole tending to diminish the number of capital crimes, have changed the number from time to time. A short time ago two of our states had five capital crimes, and two others had six. In five it is mandatory for first degree murder. In a number of those that have the death penalty it is left optional with the jury to provide death or life imprisonment.³³ For some time the federal government lagged behind a number of the states in reducing the number of capital offenses. But by 1892 it had reduced them to treason, murder, and rape. Recently, probably owing to the growth of kidnapping for ransom and the increase of killings in connection with bank robbery, Congress has added three more: injuring a kidnapped person, killing a federal officer in the line of his duty, and killing any one in connection with the robbery of a national bank.

That the sentiment of juries during the early years of this century was against capital punishment is indicated by the fact that from 1911 to 1917 inclusive there was an average of only one hundred executions in the whole of the United States each year.³⁴

After World War I, owing to the apparent increase of violent crimes, four of the states of the Union restored the death penalty. The restoration was due to the theory, born anew of ignorance and hysteria, that only that penalty would deter from the crime of murder. Every comparative study made of the relation between the ratio of homicide to the presence or absence of capital punishment in a country gives a negative result. In spite of the knowledge available, hysterical legislators continue to

³¹ Bye, *Capital Punishment in the United States* (Philadelphia, 1919), p. 2.

³² Maine, Michigan, Minnesota, Rhode Island, South Dakota, and Wisconsin.

³³ Bye, *op. cit.*, pp. 5-10. See also Robinson, *Penology in the United States* (Philadelphia, 1921), pp. 243, 246; *The Prison Journal*, Oct., 1932, p. 21; Julia E. Johnsen, *Capital Punishment* (New York, 1939), p. 10.

³⁴ Bye, *op. cit.*, p. 58.

resort to the death penalty as a means of checking violence.³⁵ It is possible that public reaction to the recent wave of kidnapping will lead some states to provide death for convicted kidnappers.

ARGUMENTS FOR AND AGAINST CAPITAL PUNISHMENT

In spite of the fact that on the whole the trend throughout Western nations has been toward the decrease of capital punishment, there is no general agreement as to its value and necessity. Most penologists doubt its deterrent value. That it has been used in the past is no argument that it should be continued. On the other hand, that its use has become more limited is no argument against it. Whether it shall be continued or not depends upon its observed effects on society. Sound social reasons based upon experience alone can determine the ultimate outcome of the debate.

Arguments against the death penalty. 1. *It is an irrevocable penalty.* Mistakes in judgment as to guilt are known to have happened. Experience shows that the evidence on which many men are convicted gives only probability of guilt. Unbalanced people will sometimes confess themselves guilty of crime of which they are quite innocent. An illustration of the unjust conviction of a man for murder is supplied by the case of Andrew Toth, who served twenty years of a life sentence in the Western penitentiary of Pennsylvania for a crime he had not committed.³⁶ If the death penalty is retained, this difficulty must be frankly faced.

2. *It is retributive in nature.* This motive in the treatment of the criminal has lost its power in most reflective minds and should vanish as a means of punishment. However, we must face the fact that the greater the weight given to social protection, the less is treatment of the criminal retributive. Under other motives than revenge, capital punishment might not be retributive. It is conceivable that it might be visited upon a criminal not as a retribution, but as a means of protecting society by eliminating the criminal.

3. *It is not reformative.* As a matter of fact, capital punishment indicates the impossibility of reformation. But theoretically if it is possible to reform a man no avenue to reformation should be closed. Death certainly prevents reformation. Who can say with certainty whether the possibility of reformation no longer exists for any man, no matter how hardened? The methods of reformation have not yet been well enough worked out and experience with any method of reformation is too limited to make it possible for us to say that reformation is impossible. Therefore, if capital punishment is retained, the theory of probability exercised upon large numbers of cases of criminals who have been subjected to reformatory treatment must be used as the justification of capital punishment. Even this method, however, does not make certain that in any particular case the one condemned is incorrigible.

4. *Capital punishment is not deterrent in effect.* It is pointed out that there are no more crimes in the states in which the death penalty has been abolished

³⁵ Lawes, *Man's Judgment of Death* (New York and London, 1924); Calvert, *Capital Punishment in the Twentieth Century* (New York and London, 1927).

³⁶ *Journal of Criminal Law and Criminology*, Vol. II, Sept., 1911, p. 48; Borchard, *Convicting the Innocent* (New Haven, Conn., 1932).

than in those in which it is to be found. Experience, therefore, even though it be limited, seems to indicate that the death penalty is not necessary for social protection. However, until the experience of states with capital punishment and those without the death penalty can be more carefully studied, we cannot be certain that there may not be other conditions that explain the equality of criminality in the two.⁸⁷

5. *Capital punishment diminishes the certainty of punishment.* It is the common experience that juries often will not convict when they know that the penalty is death. Consequently, in those cases the death penalty is the excuse for acquittal and results in the escape of the criminal from social treatment. It is urged that if capital punishment is done away with entirely, juries are more likely to convict, and thus society is protected in greater measure.

6. *It violates our humanitarian sentiments.* There can be no question that with the development of pity and kindness in the last two hundred years, and with the growth of democracy, men recoil with greater horror than ever before from capital punishment. While we should not waste sentiment upon the criminal himself, meanwhile forgetting the suffering he has inflicted upon others, there is a growing belief that we protect society as well and brutalize ourselves less if we treat the criminal in other ways. Moreover, some one individual must spring the trap, turn the switch, turn the valve which lets in the gas, or fire the gun. Society places upon this individual the brutalizing task of taking a life that no one of its members wishes himself to take. Men can take life in self-defense or in the heat of passion and have a relieving sense of justification, but to take life in cold blood causes all the humanitarian sentiments developed in thousands of years to revolt.

7. *It is the most cold-blooded and deliberate kind of murder.* It is urged that the executioner has no passion that justifies his conscience in the performance of such a deed. It is, however, a question as to whether the man who pulls the trap may not feel that he is doing a public service that is even greater because of its disagreeableness than that of the policeman who shoots the fleeing murderer or thief.

Arguments in favor of the death penalty. Against these considerations there are others urged in favor of the retention of the death penalty. It is not necessary to apologize for the brutality of capital punishment in the past in order to justify its continuance to-day. It is urged that:

1. *It is the only method of eliminating the hopeless enemy of society.* Escape from prison, commutation of sentence, and pardon are ways that criminals, helped by their friends, have found convenient for escaping life imprisonment. There is no question that in actual practice life imprisonment is not always what its name signifies. Many are the cases in the operation of criminal law in the United States in which the criminal, sentenced to life imprisonment, is released or escapes and again preys upon society. However, are we not begging the question when we assume that any person is a "hopeless" enemy of society? In the present state of our knowledge all we can do is to rely upon a careful study of the criminal's antecedents, his previous history, and his mental and physical condition and arrive at a conclusion as to the probability of his hopelessness. If we could be sure that he is incorrigible, this argument would have great force. No prisoner under our modern methods of prison labor supports

⁸⁷ Vold, "Can the Death Penalty Prevent Crime?" *The Prison Journal*, Oct., 1932, p. 4; Hoffman, "The Homicide Record for 1925," *The Spectator*, Apr. 1, 1926; Lawes, *Meet the Murderer* (New York, 1940), *Man's Judgment of Death* (New York, 1924).

himself and pays for the expense he has caused society. Why, therefore, should society support him with the constant menace of his release and subsequent depredations?

2. *It deters as no other form of punishment does.* It is argued that hardened criminals are always willing to take a chance on escape or pardon. They fight capital punishment to the utmost. Garofalo insists on the deterrent value of capital punishment.³⁸ On the other hand, Liepmann, Sutherland, and Bye think the deterrent factor negligible.³⁹

3. *Its brutalizing effect is an assumption not proved.* It is contended that if capital punishment is properly carried out, instead of brutalizing society it satisfies the sense of justice and provides social satisfaction and a sense of protection.

As for its brutalizing effect upon the executioner, doubtless that can be prevented by devices that will either make the criminal his own executioner, such as a lethal chamber in which his own weight on the floor for a certain number of minutes would turn on the gas or the electricity, or a time device that after a certain time would automatically execute the man. In these ways the relation to the victim of those charged with the execution would become more remote. It is a question, however, whether even such remoteness would not affect unfavorably those who had anything whatever to do with the execution.⁴⁰

4. *It is the only means whereby society is relieved of the support of those who continually war upon it.* It is pointed out how great is the expense of maintaining the irreformable criminals who prey upon society. The only justification of this great expense is that to eliminate the criminals would do more damage to society than the damage involved in the chance of their escape or pardon and the cost of their support. We have no way of balancing these two items in the account so as to enable us to make a decision on this point. There is no question, however, that the serious and seemingly hopeless criminals are both a menace and a burden to society.

5. *It is a positive selective agency to wipe out the stock of irreformable criminals.* Some contend that the use of capital punishment in former times explains the low rate of serious crime in Great Britain at the present day. We are not certain, however, that this is the explanation. Killing off the more hopeless criminals would probably have some effect upon the degenerate stock from which many of them come. Since most of the criminals are young men, capital punishment would prevent their having families and so eliminate the stock. It is a question, however, whether public sentiment would permit any such wholesale elimination as would be necessary to accomplish this purpose. It is also claimed with a good deal of force that life imprisonment accomplishes practically the same purpose. Garofalo has suggested absolute elimination of those murderers whom he calls the extreme, typical criminals—men who are destitute of moral sense and hence of the sentiment of pity even in its lowest terms.⁴¹

On the whole, however, capital punishment stands condemned as a practical means of coping with the criminal.

³⁸ Garofalo, *Criminology* (Boston, 1914), pp. 378-381.

³⁹ Liepmann, *Die Todesstrafe* (Berlin, 1912), pp. 15, 126-177, 190; Bye, *op. cit.*, pp. 65, 91-93; Sutherland, "Murder and the Death Penalty," *Journal of Criminal Law and Criminology*, Feb., 1925, pp. 522-529.

⁴⁰ A friend of the writer, who was a prison warden and who had charge of a condemned man hanged in the prison upon a gallows, but who had nothing to do with springing the trap, felt contaminated by the indirect associations he had with the execution. However, see the story of an executioner, Robert G. Elliott, in *Collier's*, Sept. 24, 1938, and subsequent issues.

⁴¹ Garofalo, *op. cit.*, pp. 372, 373.

The fact is that of the thousands of criminals convicted of serious crimes only a small number are sentenced to execution, and of these only a fraction are executed. Juries will not convict except in those cases that excite great public outcry.

As a means of rooting out a stock that is more prone to commit crime in the modern world, even if it could be proved that such stock plays any important part in crime, capital punishment fails because it is applied to such a limited extent. No nation in Western civilization will employ it on a wide enough scale to affect defective stock.

As a deterrent it has been shown to be a failure: (1) because it is so uncertain; (2) because it is applied so seldom; and (3) because the states that have capital punishment have as high, if not higher, homicide rates than those that do not.⁴²

Capital punishment violates the humanitarian sentiments concerning the sacredness of human life, built up over long periods of time. It is only when some new form of atrocious crime is frequently committed, or when war makes all human life cheap that states reenact laws providing for capital punishment.

QUESTIONS AND EXERCISES

1. Does the popular demand for capital punishment depend primarily on the theory of retaliation, expiation, deterrence, or the protection of society?
2. If you were condemned to die, which method would you prefer? Why?
3. Why, then, does society use other methods?
4. Compare the figures on homicide in the census report on *Mortality Statistics* in a state that has capital punishment with those from one that does not have it. Select states in the same general region and with about the same distribution of urban and rural population.
5. Do you think Loeb and Leopold should have been hanged? Defend your position.
6. What do you think is likely to be the effect of World War II on laws related to capital punishment?

⁴² Lawes, *Man's Judgment of Death*, Appendix.

Chapter XXII

PENAL TRANSPORTATION

From time immemorial banishment of offenders has been a common practice. Even in tribal societies the kin-wrecked man was not an unknown phenomenon. In the classical nations of antiquity banishment of political opponents was frequent. Among the Greeks Cleisthenes introduced the practice for prominent persons in 509 B.C. Alcibiades finally succeeded in abolishing it in 416 B.C. Among the important Greeks who were banished were Miltiades, Themistocles, Aristides, and Alcibiades.

The Romans also practiced banishment for important political offenders, and there is some evidence that they transported criminals to the distant parts of the Empire for work in the mines. Transportation as a modern method of punishment, however, had its origin in England.

ORIGIN OF THE ENGLISH TRANSPORTATION SYSTEM

Vast changes went on in English economic and social life in the sixteenth and seventeenth centuries. The discovery of North America, the war with Spain in the days of Elizabeth, the increase in the volume of currency, the development of foreign trade with the consequent stimulation of industry at home, and the Reformation were factors in these changes. The most important economic changes which broke up the old status of society in England were the enclosures, the growth of commerce, and the increase of towns. With the development of the manufacture of woollens, the old manorial system of farming broke down. From the middle of the fifteenth century to the close of the sixteenth these various changes in English life were most evident. Politically, intellectually, and religiously the nation was in ferment.¹

Consequent upon the break-up of the manor and the increase of commerce occurred an increase in the number and size of towns. Ashley is of the opinion that for the period from 1350 to 1550 "on the whole there was a steady and constant growth of wealth in the civic communities."² Into these towns drifted many of the displaced tenants who formerly had an established position on the medieval manor. Poverty among

¹ Cheney, *Industrial and Social History of England* (New York, 1906), p. 141.

² Ashley, *English Economic History and Theory* (New York, 1910), Part II, pp. 50, 51.

them was rampant, and crime demanded the attention of the authorities.

Then there were social and political changes that increased the amount of crime. The customs and the manorial courts had for the most part taken care of the infractions of customary discipline in the old days. With the break-up of the manor it became necessary to pass numerous laws in the endeavor to keep men in their old relationships. The Reformation had disturbed the social equanimity of the times. Moreover, many Jews had found England a profitable country in which to live. Elizabeth's Act of Uniformity was an endeavor to bring about religious unity and bore heavily upon Jews, Catholics, and Nonconformists. This endeavor of the government to unify the various cultural elements of the population resulted in an increased number of law breakers. Furthermore, in the endeavor to raise revenues for the government a large number of new taxes were imposed, and prosecutions for the evasion of these taxes became frequent. As a result of all these things there was stirring in England vast discontent growing partly out of the wretchedness of certain elements of the population and partly out of the growing spirit of democracy that all these cultural movements had incited.

As the result of England's foreign trade and developed agriculture, an increase of population had occurred. But English government was in the hands of the landed nobility and of the prosperous bourgeoisie, and regulations were rigged in their favor and against the laborers.³ There was consequent suffering and criminality. In connection with that fact is one of even greater significance, namely, the breakdown of the old religious restraints upon conduct.

Under the stress of all these conditions the number of criminals had increased so greatly that the old local jails had become inadequate to house properly the debtors and those who were in detention for trial. Consequently conditions in the prisons had become terrible beyond description.

Futhermore, the old methods of punishment proved to be ineffective in the conflict with crime. Mutilations, whipping, the pillory, stocks, and other secondary methods of punishment were inadequate to cope with the growing problem. It was expensive to the taxpayers (the nobility and the merchants) to feed these criminals in jails. The latter were not equipped to put them at work. It was not until John Howard discovered houses of correction on the Continent that work for prisoners in an institution was thought of.

Thus the growth of crime, the inadequacy of the old methods of punishment, and the unsuitability of the old local jails as places of punishment created a situation that demanded that some new method should be tried.

Just at this time the new colonies in America were engaged in a

³ Rusche and Kirchheimer, *Punishment and Social Structure* (New York, 1939), Ch. III.

desperate struggle to conquer the wilderness, and labor was greatly in demand. It was this situation that gave rise to the first importation of Negro slaves. Moreover, the government was engaged in all kinds of schemes to promote emigration to the colonies.⁴ Hence the question arose as to whether England could not supply the needed labor and at the same time be rid of lawbreakers by transporting them beyond seas.

HISTORY OF TRANSPORTATION IN ENGLAND

In common with other nations of the world England had a precedent for the system of transportation in her practice of outlawry. The outlaws of English romance, like Robin Hood, were men who had fled from justice. Their chattels were forfeit to the king, and their lives could be taken by any one who might chance upon them. Even their children were outlaws. They could be restored to civil life only through the king's pardon. Magna Carta provided that no free Englishmen should be exiled.⁵ This provision, however, was evaded in many ways. Before the abolition of the right of sanctuary a free pardon was granted to criminals in sanctuary on condition that they quit the realm, but with the threat of hanging should they ever return. Moreover, many of those who had passed through the ordeals and, prior to 1530, those lay criminals who had left the sanctuaries under the church's protection were allowed to abjure the realm.⁶ In time this policy, instead of being permissive, became positive. The earliest case is said to have occurred in 1619 as an arbitrary shipment of undesirable citizens to the plantations.⁷ Advantage was taken of some of the clauses of the vagrancy act passed during the reign of Elizabeth, which empowered justices in quarter sessions to banish offenders and order them to be conveyed into such parts beyond the seas as should be assigned by Her Majesty's Privy Council. James I ordered a hundred dissolute persons to be sent to Virginia.

Penal transportation first received legislative sanction by the Act 18 of Charles II, Chapter 3, which legalized the transportation of felons under sentence of death to northern America. They were, however, to have the choice between hanging and transportation.⁸ A systematic development of the system was provided in the legislation of George I in 1718.⁹ This act, ostensibly concerned with supplying the ill-stocked labor market of the plantations, expressly authorized the transportation of all

⁴ Gillin, *The Dunkers: A Sociological Interpretation* (New York, 1906), pp. 97-99.

⁵ For details see Ives, *A History of Penal Methods* (London, 1914), pp. 97-100; "The Magna Carta," Section 39, in Lee, *Source Book of English History* (New York, 1905), p. 175.

⁶ Wines, *Punishment and Reformation*, Revised Edition (New York, 1910), p. 168; Ives, *op. cit.*, pp. 100, 101.

⁷ Wedderburn, *Observations on the State of English Prisons* (1793), p. 5, quoted by Webb and Webb, *English Prisons Under Local Government* (London, 1922), p. 44, note.

⁸ Wines, *op. cit.*, p. 168.

⁹ Ives says the act was passed in 1717 instead of 1718 (*op. cit.*, p. 109).

felons sentenced to a term of imprisonment for not less than three years.¹⁰

Under the legislation of the early Georges prisoners were turned over to contractors, who agreed to transport them to America without cost to the government on condition that the contractor had the right to sell their services for from seven to fourteen years to planters in America. The number of criminals having become so numerous that the local prisons were clogged with them in 1767, an act was passed providing for the speedier and more effectual transportation of offenders. Even these measures did not satisfy the demand for cheap labor in the colonies. An extensive kidnapping business grew up in England to provide bond-servants for the colonists.¹¹

This process of exporting criminals to the American colonies continued uninterruptedly until the outbreak of the American Revolution. The result upon the criminals transported to America seems to have been rather good. Says a recent writer: ¹²

The system seems to have met, in certain respects, with some success. The new associations, the salutary agricultural labour, the strict supervision exercised, rendering impossible the continuance of vicious, nefarious practices, combined to effect a reformation in the case of even some of those who had before been the most abandoned criminals. Many of them, after the expiration of their term, became farmers and planters on their own account, and came to lead respectable lives, and in some cases even rose to wealth. The natural abilities of thieves, burglars, forgers, false coiners and other "clever enemies of society" were diverted to simple and more useful purposes; and their labour, especially in Maryland, was found to be such a valuable asset that arrangements were made to convey them without any cost to the government, which had before allowed five pounds a head.

The Hulks. When transportation was stopped by the American Revolution, England had to resort to various devices to care for her criminals. The local jails in which they had been kept after sentence until they could be transported now became overcrowded.¹³ As a temporary device hulks moored along the coast of England were provided by an act passed in 1776 in which the prisoners who could not be transported should be kept. These were worse even than the local prisons, "being crowded, dirty, and verminous, with the men and boys all in irons, often in double irons, for greater security. Those who were able to do rough work were employed on shore on various dockyard tasks, such as digging and dredging, and worked the same number of hours as free laborers."¹⁴ There was the usual monotony and stagnation of prison life, while association together led to contamination. The only method of keeping the convicts in order in these hulks and at work was the lash. For almost thirty years the hulks

¹⁰ Wines, *op. cit.*, p. 162; Webb, *op. cit.*, p. 44, note; Ives, *op. cit.*, pp. 108-110.

¹¹ Ives, *op. cit.*, p. 113.

¹² Phillipson, *Three Criminal Law Reformers* (New York, 1923), pp. 174, 175.

¹³ Ives, *op. cit.*, p. 124.

¹⁴ *Ibid.*, p. 125.

were used as the places of confinement for prisoners who had formerly been sent to America. In fact, they were not entirely abandoned until 1858.¹⁵

Australian Transportation. Out of this situation grew the experiment of transporting criminals to Australia, discovered by Captain Cook in 1770. Remembering the ease with which criminals were disposed of earlier by transportation to America, many writers suggested that this far-off land of Australia would make an ideal place for a convict colony. The first fleet of convict ships, containing 778 criminals, sailed for Australia in May, 1787, and landed in Sydney after an eight months' voyage.¹⁶ The second fleet landed in Port Jackson in June, 1790. It was in charge of contractors, and the sufferings of the convicts are described as horrible.¹⁷ This early settlement at Sydney did not greatly prosper. The surrounding country was not fertile, the convicts knew little about farming, and there was no one among the guard competent to instruct them; hence they lived largely upon rations sent out from England. The settlement, therefore, was composed of two elements: convicts and the guards sent to keep them in order. Realizing after a time that a respectable element was necessary in such a community if the best results were to be secured, the government encouraged a few free families to emigrate. These families, however, were soon swamped in the mass of convicts, shipload after shipload of whom continued to be sent out year after year.

By 1791 the time of some of the convicts had expired, and the governor commenced the practice of giving thirty acres to each single man and fifty to each married man, with ten more acres for each child. He also gave them tools, seeds, and rations for eighteen months at the expense of the government. Moreover, about 1793, there originated the practice of assigning some of the convicts to settlers. The free emigrants found in these prisoners a cheap labor supply. They were allowed to take a certain number proportionate to the amount of land they held. As a result of this system of assignment to free settlers, the worst prisoners remained in the hands of the government to be cared for in other ways, while the best ones went into the families of the free citizens of Australia and in course of time found themselves admitted to comparative freedom on what was called "ticket-of-leave." During this period and for these assigned convicts the results seem to have been good. They established themselves in civil life, and many of them found new opportunities of which they made good use. Those who remained in the hands of the

¹⁵ *Ibid.*, p. 126. For a good brief account of English penal transportation after the American Revolution see Gillespie, "The Transportation of English Convicts after 1783," *Journal of Criminal Law and Criminology*, Vol. XIII, Nov., 1922, pp. 359-381.

¹⁶ For a description of the voyage see *The Voyage of Governor Phillip to Botany Bay* (London, 1789).

¹⁷ For details see Ives, *op. cit.*, pp. 131, 133.

government were used in building government works in Sydney and later in other parts of the continent.¹⁸

As the number of emancipists—those convicts who had served their time and had been freed—increased, a problem arose in Australia that had not appeared in America. In America the convicts, being few, were absorbed in the population. In Australia, on the other hand, because of the danger of the settlers' being outnumbered by the emancipists, a strong hostility arose among the free settlers against the discharged convicts. They refused to fraternize with the convicts who had served their time. The cleavage between the two classes grew wider, and an agitation arose in Australia to stop transportation. This movement, followed by a league of the free settlers, was in full blast by 1835.¹⁹

So violent was the opposition that finally the government decided in 1837 to cease assigning convicts to private persons and in 1840 prohibited the sending of convicts to Australia. That diverted the convict stream to Van Diemen's Land.²⁰ Hitherto convicts had been sent to this island, but not in large numbers. There the discipline had been severe from the beginning. Now, with the coming of other thousands, the executive in authority was swamped. To meet the situation a "probation" system was devised. The convicts passed through a series of stages, namely, strict imprisonment, labor in government gangs scattered about the country, a pass authorizing them to seek work within certain geographical limits, ticket-of-leave providing a wider range in which to find employment, and conditional pardon followed by restored liberty.

Both in the earlier period in New South Wales in Australia, and later in Van Diemen's Land, when the number of convicts became greater than the country could absorb and the government had to handle those who could not find places with individual settlers, the results were very bad. Those in the hands of the government earlier were formed into road parties, chain-gangs, or penal settlements. The road parties, as the name implies, were kept in the vicinity of towns or marched about the country doing the public work that the government could devise. From these road parties many of the escapes occurred that resulted in the gangs of "bushrangers" who became a terror to the whole country. In the chain-gangs discipline was far harsher, the work was hard, and the custody close. The men were confined in barracks or stockades and hulks between sunset and sunrise and were subject to numerous floggings. All wore heavy leg-irons. Those whom the road parties and the chain-gangs had failed to control effectively were sent into the penal settlements, which proved to be terrible institutions. It was about this time (1826) that Norfolk Island, located 1,000 miles northeast of Australia, was designated as a

¹⁸ *Ibid.*, pp. 138-140.

¹⁹ *Ibid.*, p. 141.

²⁰ Forsyth, *Governor Arthur's Convict System, Van Diemen's Land, 1924-36* (London, 1935).

place for the worst transportees. It became a veritable hell, but under Colonel Maconochie, in charge until his moderate methods led to his dismissal, a system of stages was devised. According to this plan, when a convict had worked up to the highest stage he was granted a ticket-of-leave. This permitted him to be transferred to Australia and assigned to a settler for the balance of his time.

Severe repression and the association of the worst criminals England produced, led to undesirable conditions that excited the condemnation of all visitors from England. Reports by such men as Archbishop Ullathorne, Collins, and others finally awakened the best minds of England to the evils of transportation.²¹

At home such men as Jeremy Bentham and Archbishop Whately thundered against the system.²² Moreover, in Australia itself a tide of remonstrance against transportation steadily rose. In 1835 Judge Barton raised a loud protest and in a charge to the grand jury of Sydney intimated that transportation must cease.

Furthermore, the cost of the colonial convict establishments was so great, amounting to more than two and a half million dollars per annum, that it led to agitation for its abolition on the basis of expense.²³

Thus the failure of the Australian transportation system may be laid to the enormous number of convicts sent to a sparsely populated country, to the evils that grew up in the penal settlements in which the worst characters were incarcerated, to the terrorism inspired by bands of escaped convicts, to the cost of the system, and to the conviction that as practised it would not lead to the reformation of a large percentage of the criminals.

THE DECLINE OF PENAL TRANSPORTATION IN ENGLAND

In the long history of transportation in England advocates and opponents marshaled many arguments for their respective points of view. In the light of the newer penology many of these arguments seem strange to us to-day, but they can be readily understood in the light of the theories of punishment then dominant.

Jeremy Bentham was the most indefatigable writer against transportation of that time.²⁴ His collected works bear abundant evidence of his

²¹ For details of the iniquities of the penal colonies see Ullathorne, *The Horrors of Transportation Unfolded to the People*; Clarke, *For the Term of His Natural Life* (1875), and his *Stories of Australia in the Early Days* (1897). For a brief notice see Webb, *op. cit.*, p. 44, note 1; Ives, *op. cit.*, pp. 146-170. *Adventures of an Outlaw* (New York, 1929), *Martin Cash, The Bushranger of Van Dieman's Land in 1843* (Hobart, Tasmania, 1879).

²² Bentham "Principles of Penal Law," in *Works*, ed. by Bowring (Edinburgh, 1843), Vol. I, p. 490; Whately, *Thoughts on Secondary Punishments* (London, 1832), pp. 53-103.

²³ *Encyclopædia Britannica, Ninth Edition*, Vol. XIX, p. 751.

²⁴ Whately, *Thoughts on Secondary Punishments* (London), p. 201. The strange thing in the discussions of transportation by both Bentham and Archbishop Whately

interest in the subject of the treatment of prisoners and his inveterate hostility to transportation as compared with a penitentiary system.²⁵

In his "Principles of Penal Law" Bentham speaks of the good and bad effects of transportation to America, to Norfolk Island, and to New South Wales. He thinks the selling of the criminals to masters in America by the contracting ship-owners who transported them had a reformatory effect upon the criminals because they were in families where they had thrown about them influences that led often to reformation. At Norfolk Island and New South Wales this element was lacking, and he condemns the system in the most unsparing terms. He thinks the system in any case lacks all the elements of a good penal system and has every element that a system should not have. It violates every object of punishment that he sets up—exemplarity, reformation, incapacitation, compensation or satisfaction to the injured party, and economy.²⁶

In his "A View of the Hard-Labour Bill" Bentham argues for prisons as against transportation. His arguments are: ²⁷

1. In a point of proportion transportation is unequal.
 - a. Some can buy off the servitude incident to transport by paying their passage fare.
 - b. No two transported suffered the same—one might be glad to go and another hate to go.
2. It is "unexemplary." What they suffered is not known to the people for whom the example is designed.
3. It is "unfrugal." There was great waste of life and of expense in conveying them.

is that transportation is condemned for resulting in the establishment of those transported in the new land in self-supporting and even comfortable positions. This condemnation is on the ground that the reports of such fine results to the transported get back to England and make the much underpaid workman wish to commit some crime for which he can be transported to the same glorious country. Both are laboring under the principle that one of the prime purposes of punishment is deterrence. Therefore, if transportation results in the reformation of the transported and in his economic rehabilitation, so that he has a more comfortable life than his fellows left in England, it is a bad kind of punishment. On the same reasoning there are people to-day who argue that the conditions in penal institutions should not be made too good, else the people outside will wish to break in. On that same premise we should not attempt in our prisons to give a man an education or teach him a trade; for if we do, he may when he gets out be so much better off than if he had never been in prison that other poor people outside, seeing the advantages provided him in prison, will commit crime so as to share such privileges themselves. The real trouble was that the conditions were so dreadful in England that they were making criminals, while the conditions in New South Wales were so much better for those who had finished their period of detention there that they settled down to normal and successful life. They were not criminals by nature but had been forced by the evil conditions in England to commit crime. Those arguments, however, led to the terribly repressive measures adopted in Australia and Van Dieman's Land, which from considerations of humanity led to the condemnation of transportation.

²⁵ See his "Panopticon vs. New South Wales," *Works*, Bowring Edition (Edinburgh, 1843), Vol. IV, pp. 173-248, and his "Principles of Penal Law," *Works*, Vol. I, Book V, Ch. 2.

²⁶ *Ibid.*, Vol. I, Book V, Ch. 2.

²⁷ *Ibid.*, Vol. IV, pp. 6, 7.

4. Disables the offender from committing crime less than imprisonment because easier to return from banishment than from prison.
5. Does serve for reformation by means of the servitude involved, but not so well under a private master whose object is profit as under imprisonment at hard labor under the united wisdom of the nation with reformation as an express purpose.

The transportation system, which was started on the theory that by sending criminals to an unsettled land in the course of time it would be possible for them to provide for themselves and at the same time develop a new colony, proved to be a disappointment.²⁸ Bentham argued that of the million and a half pounds he thought the system had cost in 1802 a million might have been saved by a penitentiary system at home.

Bentham pointed out that in every single respect transportation failed. While his argument was doubtless too strong for the facts, the hoped-for benefits of the transportation system were not realized. It reformed only a few, and even in the early period when the convicts were released and scattered among the free settlers it did not prevent some of them from returning home worse than when they were sent. It led to the development of criminal communities in a new continent that England was desirous of bringing to civilization; it caused untold miseries to the free settlers in Australia; and it was an enormous expense. Practically the only good things that came out of the experiment were such devices as ticket-of-leave, grading of prisoners, and the mark system, which afterwards entered as elements into the reformatory system of Elmira.

As a result of costly and unfortunate experiences and the constant agitation against it in England as well as the pronounced hostility of the free settlers of Australia, transportation to New South Wales was suspended by administrative order in 1840 and by legislative act in 1847 and 1848. The word disappeared from the statutes in 1857 but in practice continued under the name of "probation" until 1867. Thus ended an experiment in England that promised great results. Owing to her failure to understand the importance of careful supervision and the necessity of scattering the deported criminals in small numbers over a wide territory, with careful supervision by capable men, the experiment failed. It is possible that it might have failed under the best of circumstances. Under the actual circumstances failure was inevitable. Says Ives concerning the Australian transportation.²⁹

Thus we need not altogether blame transportation for the fell deeds which prison officials did far away from freedom. There was much that was good and healthy in transportation, but the guilt and stain round the rocks of those dreadful prisons will hang and linger in the memory of mankind till the ocean of time, which is vaster than the Pacific, engulfs them, and sweeps them, and us, away.

²⁸ See his "Panopticon vs. New South Wales," *ibid*, Vol IV, p. 177. Forsyth, *op. cit.*, p. 122, estimates that during its existence the transportation system cost 7,000,000 pounds sterling of public money.

²⁹ Ives, *op. cit.*, p. 170.

TRANSPORTATION IN FRANCE

France tried the same plan of treating her criminals, beginning the practice in 1791 when persons convicted a second time were transported. Later the law included vagrants. Madagascar was made the penal colony for France in the second year of the Revolution. The Napoleonic wars prevented the carrying out of this design. The project, having never been carried out, was given up when the old code was displaced by the Code Napoléon in 1810. For a short time following the Reign of Terror in 1851 it was reestablished by an unconstitutional ministerial decree, Guiana and Algiers being named as the colonies. In the following year, however, the decree was modified and made to apply only to Guiana. In 1854 a law was passed legalizing transportation as a substitute for hard labor in the prisons (*bagnes*). Following this, New Caledonia, in the Southern Pacific nearly a thousand miles east of Australia, was made a penal colony in 1863.

The colony in Guiana has been a failure. The health conditions there are so trying to white men that from 25 to 32 per cent of those transported died annually.

The most horrible conditions existing in that penal colony have been revealed by visitors.⁸⁰ With the coming of the radicals with Herriot at their head, it was hoped that the colony would be abandoned, but the shift of political parties in France soon destroyed that hope.⁸¹ Under Vichy apparently it still existed as a penal colony.

The colony at New Caledonia, opened as a penal colony in 1864, has been a failure. Since 1894 convicts have not been sent from France to New Caledonia.⁸²

TRANSPORTATION IN RUSSIA

Exile to Siberia for Russian political prisoners has long been known. Dostoevski's *House of the Dead* and George Kennan's *The Siberian Exile System* have pictured the terrible conditions in these penal colonies.

Even under the Soviets there are isolation camps at Archangel and in Siberia. Terrible stories of the treatment in these colonies are told, but no foreigner is ever allowed to visit them.⁸³

⁸⁰ Bartz, *The Horrors of Cayenne* (New York, 1930); Niles, *Condemned to Devil's Island* (New York, 1928), and *Free* (New York, 1930); Gillmore, "Dry Guillotine," *Asia*, Feb., 1925, p. 113; Halliburton, "De Profundis," *Ladies Home Journal*, Nov., 1929, p. 30; Allison-Booth, *Hell's Outpost* (New York, 1931); Belbenoit, *Dry Guillotine* (New York, 1938).

⁸¹ "Extinguishing an Island Hell," *Literary Digest*, Oct. 11, 1924, p. 32; Wales, "Modern Torture Ship Bears 680 French to Exile," *Chicago Tribune*, Mar. 31, 1926; Shiver, "French Convict Ship Sails with 675 for Guiana," *Chicago Tribune*, Nov. 8, 1929.

⁸² Mossé, *Les Prisons* (Paris, 1926), p. 203.

⁸³ Tatiana Tchernavin, *Escape from the Soviets* (New York, 1934); Tchernavin, V. V., *I Speak for the Silent Prisoners of the Soviets* (Boston, 1935); Kitchin, *Prisoner of the OGPU* (London, 1934); Colcott, *Russian Justice* (New York, 1935).

As one reads to-day the description of any of these penal colonies, he is led to wonder at man's inhumanity to man. The long marches from European Russia to Siberia in the early days were no less fatal to large numbers of the convicts than the ship passage to Australia from England to English convicts. One of these Russian penal colonies was on the island of Sakhalin, captured by the Japanese in the war between Russia and Japan.⁸⁴

TRANSPORTATION AS A MODERN PENAL SYSTEM

In spite of this history of the failure of transportation in three modern nations there are still some who believe that, properly handled, transportation has penal value. Certain of the European penologists favor it, at least for certain classes of criminals. Aschaffenburg thinks that deportation would suit well the few energetic and vigorous persons among criminals but that it would not be adaptable to the large majority. However, he prefers penal colonies in the homeland where prisoners can be employed in draining swamps and doing other public works upon which it would not be advisable to employ ordinary workmen because it would be too difficult to supply them with shelter and food and the pay would be too small.⁸⁵

Garofalo, the Italian penologist, is one of the chief modern advocates of transportation, but he too would limit it to certain classes of criminals. With his belief that elimination is the only satisfactory method of handling what he calls the real criminal and with the prejudice that exists against capital punishment as a method of elimination, he suggests transportation as one means of eliminating certain criminals who cannot be reformed in their old surroundings. He thinks this method should be employed to eliminate from society professional thieves, vagabonds, and habitual criminals in general. He says: "Only in these entirely new conditions of existence will their adaptation to the social life become possible, a conclusion which is borne out by numerous historical examples." He also advises it as a method of treating offenders guilty of serious physical or moral cruelty, when the crime has appeared as an isolated instance in the life of its author and does not prove an absolute unsociability on his part. He suggests it also for active offenders who lack the moral sense and have a persistent "instinct" of cruelty, which sooner or later will lead to murder, and who have been repeaters. He suggests that the islands of Oceania be thus employed. He says Russia has an abundance of room in Siberia for such offenders.⁸⁶

⁸⁴ See Dostoevski, *The House of the Dead*, Everyman's Library, No. 533 (New York, 1916). The practice of deporting political prisoners to Siberia and Archangel is not discussed here, since the deportees are not ordinary criminals.

⁸⁵ Aschaffenburg, *Crime and Its Repression* (Boston, 1913), pp. 267, 268.

⁸⁶ Garofalo, *Criminology* (Boston, 1913), pp. 220-225, 387, 410. (Copyright by Little, Brown and Co., 1913. Reprinted by permission).

Another European penologist who argues for transportation is Tarde. He says:³⁷

The being sent abroad, the complete change in climate and way of living impresses upon many persons who have been deported the moral stirring up which disposes them toward a change of heart, and the power of example is such that, if the new surroundings into which they are thrown are honest or practically honest, they are there regenerated in all seriousness.

He thinks, however, that its success is dependent upon the right kind of leaders and the gradual release and mingling of the convicts with honest people.³⁸

A few countries retained at the outbreak of World War II a system of penal colonies located at places remote from the thickly populated parts of the nation. Russia retained a few such colonies for political prisoners. The Philippines had its famous colony on the Island of Palawan; Mexico, the Tres Maria Islands off the West Coast; France, its infamous colony in French Guiana; Argentina, Ushuaia on Beagle Channel at the southern tip of South America. It is possible that the war will result in the abandonment of the colony in French Guiana and that in the Philippines. However, of all these the one that has proved to be most successful was that in the Philippines. The reason is that, whereas the distant penal colony has usually been reserved for the worst criminals, the Philippines reserved her colony on Palawan for the most promising ones and gave them the greatest degree of liberty.³⁹

That penal transportation on the whole has been a failure is shown not only by the earlier experiments in Australia but also by most of those still in existence. That in the Philippines is an exception. Heindl has shown that the penal settlement on the Andaman Islands for Indian criminals and that of the French in New Caledonia have failed. The failure is registered in three items: (1) There is a greater mortality of those sent to penal colonies than of those sent to prison; in the Andamans the rate was 14.5 per cent as compared with 7 per cent in the prisons of India. (2) The expense is greater. An Indian convict costs the government above his earnings sixty rupees; one in the Andamans, 100 rupees. (3) The released convicts fail to become settlers. Of 60,000 who had been sent to the Andamans when Heindl visited them, 600 free colonists remained. Of the 600 only 279 earned their own living, and of these only 149 were farmers. He found only a small proportion (1 per cent) permanently settled in New Caledonia.⁴⁰

³⁷ Tarde, *Penal Philosophy* (Boston, 1912), p. 208. (Copyright by Little, Brown and Co., 1912. Reprinted by permission.)

³⁸ *Ibid.*, pp. 209, 510, 516, 521, 522.

³⁹ See Gillin, *Taming the Criminal* (New York, 1931), Ch. II; "The Southernmost City," *Life*, Aug. 25, 1941, p. 56.

⁴⁰ Heindl, "Penal Settlement and Colonization," *Journal of Criminal Law and Criminology*, Vol. XIII, May, 1922, pp. 56-60.

In view of the difficulties usually involved in penal transportation—of finding new unoccupied lands in which there are no free settlers to object, of obtaining competent administrators, of exercising careful supervision by the central penal authorities, and of the expense usually involved in such a system of handling prisoners—transportation is not to be recommended save in exceptional circumstances and then only as a stage preparatory to return to free society. All of its advantages and less of its disadvantages can be found in probation, a modern prison system with agricultural colonies attached, a good parole system, and adequate after-care.

QUESTIONS AND EXERCISES

1. Outline the origin of the English penal transportation system: (a) to the colonies in America and (b) to Australia.
2. What were the results on the character of the transportees to America? to Australia? Explain the reason for the difference.
3. Give the arguments against transportation that finally led to its abandonment as a penal policy in England.
4. Why cannot penal transportation be defended as a modern method of treating the criminal?
5. What lessons were learned from the experience with penal transportation in Australia?
6. Why has the Philippine system of penal transportation proved to be so much better than the system in other countries?

Chapter XXIII

THE PRISON SYSTEM: ORIGIN AND DEVELOPMENT

At the present time the prison system is the most important agency for dealing with serious criminals. It was not always so, however. The prison as a method of punishment is a comparatively modern development.

THE ORIGIN OF THE PRISON SYSTEM

The prison system as a method of handling criminals was not the outgrowth at the beginning of a carefully thought-out plan; it was an historical accident. It resulted from the confluence of several factors: (1) From time immemorial there had been "prisons" for the detention of those awaiting trial or punishment. But they were not designed as places of punishment.

(2) Apparently the confinement of prisoners as a method of punishment and of correction goes back to the buildings devoted to such purposes by the Popes. At any rate, John Howard found that the great prison at Rome in his day was called the "New Prison," and it was built by Pope Innocent X in 1655.¹ His description of many others shows that they antedate this New Prison.

Back of these special institutions for criminals, and furnishing suggestions for their administration, were the hospitals. These were generalized institutions for the care of all sorts of distressed individuals—orphans, aged, sick, crippled, insane, and criminals. John Howard described many of these in his *State of Prisons* and in his later volume, *Appendix to the State of Prisons*. Out of them in the Seventeenth and Eighteenth centuries developed the "prisons," "gaols," "houses of correction," "rasp houses," "spin houses" and "maisons de force" described by Howard as he found them in the various countries he visited.

(3) The break-up of the domestic system of manufacture by the In-

¹ *The State of the Prisons in England and Wales* (Warrington, 1777), Section IV. Howard found prisons and houses of correction in France, in what is now Belgium, in Holland, Germany, Switzerland, and Italy, when he made his visits to those countries in 1773 and 1774. Work was provided in most of them, and in most each prisoner had his own cell. Hence, the separate system was already established in Europe before the Pennsylvania system was established. This circumstance probably accounts for the ease with which the Pennsylvania system later was accepted in Europe.

dustrial Revolution, and the growth of commerce had resulted in an increase of population, but the benefits had gone largely to the owners of capital rather than to the workers. The result was an enormous increase of poverty-stricken, hopeless, and depraved individuals, who swelled the ranks of the criminal.²

(4) The abolition of transportation to Australia and Van Dieman's Land forced the governing classes in England to consider some new way of handling this mass of criminals. The hulks and the jails were inadequate.

(5) Experience with industries in the Houses of Correction had shown that prisoners sent to those institutions for short sentences could be made to produce goods needed in trade and thus help to support themselves rather than be kept in idleness at great expense to the taxpayers.

Origin in England. There had gradually grown up in the counties and municipalities of England, as elsewhere, jails or local prisons intended originally not as places of punishment but for the detention of people awaiting trial, debtors, and those who were to undergo such forms of punishment as whipping, the pillory, the stocks, and execution.³

Houses of correction, or bridewells, also had risen as places of punishment with the diminution of corporal and capital punishment. Later certain counties attempted to reform their jails and bridewells following John Howard's exposures. It may be said, then, that in England the common jail and the bridewells were precursors of the prison.⁴

Howard had called attention to the evils of the jails, but had made no suggestion that they should be nationalized or that they should be used as places of punishment. However, the cessation of transportation to America forced the intellectual leaders of prison reform to consider the building of national prisons. Sir William Blackstone and Sir William Eden drafted a comprehensive bill for the government of the proposed national penitentiaries. In this bill the most novel principle was that of non-intercourse between the prisoners themselves. To secure this it was proposed in the bill that they should be secured in solitary cells at night and so far as practicable should be carefully supervised during the day when they were working or exercising together.⁵ Furthermore, the bill provided for measures to secure employment and to encourage the convict on his discharge. Another unique feature of this bill, which later had influence upon prison management, was that it stipulated that both officers and convicts should share in the profits of the labor of the prison. This law was passed in 1779 but did not become operative because, owing

² Rusche and Kirchheimer, *Punishment and Social Structure* (New York, 1939), Chs. III, VI.

³ Webb, *English Prisons under Local Government* (London and New York, 1922), pp. 1-3.

⁴ *Ibid.*, Chs. I-V.

⁵ *Ibid.*, p. 39. This proposal failed of realization in England but came to fruition nearly a half-century later in Auburn prison, New York.

to the American Revolution, not a single one of the national penitentiaries therein provided for was actually built, and the act was superseded fifteen years later by the contract the government made with Jeremy Bentham for the building of a large prison on the plan outlined in his book called *The Panopticon*.⁶ This bill however, was not without effect on subsequent legislation. In 1791 an act was passed by Parliament applying most of the principles of this bill to all places of confinement in England and Wales. This may be called the first General Prisons Act of England.⁷ Further progress of prison reform and development was interrupted by the Napoleonic Wars.

In the meantime, to take care of the prisoners who had formerly been transported to America—at that time about a thousand prisoners a year—England resorted to the use of *hulks* previously described. Although later national prisons were built, the hulks continued to be used for eighty years.⁸

In 1786 transportation to Australia had been determined upon as a method of relief. By 1821 the failure of the Australian experiment had become fairly clear. As the result of Jeremy Bentham's contract with the government he had spent nearly his entire fortune, the government had not reimbursed him, and his prison had not materialized because of inadequate governmental support. Finally in 1812 the government settled with Bentham and proceeded to erect a new prison at Millbank on its own account. It was built on the lands originally bought by Bentham, and by 1816 a portion of it was ready to receive prisoners.⁹

As opposition to transportation to Australia developed, a new wave of prison-building occurred. England was now forced to take measures to care for her prisoners at home. In 1832 William Crawford was sent to America to examine and report upon the prisons which had grown up in the United States. Reports of the remarkable success of the American experiments had come to England and were commanding public attention. The new prisons now constructed by England were greatly influenced by the Pennsylvania system in America, to be described later.¹⁰

Origin in the United States. At the time of the American Revolution the colonies had the common jails that had been brought over as a heritage from the mother-country. The one colony in which radical ideas with respect to the treatment of criminals arose was the Quaker colony of Pennsylvania. In Penn's Great Charter capital punishment for all crimes but homicide was abolished. William Penn himself had been a prisoner in Europe. Consequently the "frame of government" brought over by him abolished tortures and bloody punishments and substituted

⁶ *Ibid.*, pp. 45, 46; for details of Bentham's scheme and its sad ending see Phillipson, *Three Criminal Law Reformers* (New York, 1923), p. 129.

⁷ Webb, *op. cit.*, p. 40.

⁸ *Ibid.*, pp. 44-46.

⁹ *Encyclopædia Britannica*, Ninth Edition, Vol. XIX, pp. 748, 749.

¹⁰ Webb, *op. cit.*, pp. 94-96.

for them the penalties of imprisonment at hard labor, flogging, fines, and forfeitures. Penn had visited the workhouses of Holland and was deeply impressed with their industrial features.¹¹ While these humane provisions of Penn provided for in his "frame of government" were set aside by Queen Anne, they were reenacted by the Province of Pennsylvania and continued in force until the death of Penn in 1718. Then the sanguinary laws were again restored and continued in force until the American Revolution.¹²

When the Quakers decided to lessen the number of capital crimes, the question arose as to what they should do with the serious offenders. The secondary punishments, like flogging, and so on, were not adequate to deal with the problem.

The Pennsylvania legislature in 1786 at once set to work to reduce the number of capital crimes and to punish the criminals in other ways. The death penalty was reserved for treason, murder, rape, and arson. Other crimes were to be punished by whipping, imprisonment, and hard labor in public. Where should the offenders be imprisoned? There was the old jail at Third and High Streets in Philadelphia, but it was characterized by the promiscuous mingling and degradation described by Howard, whose writings were just becoming known in America. It was all that Penn had tried a century earlier to displace by the institution of county workhouses. At first labor on the roads and streets was tried, with bad results. The people feared that the prisoners would escape and commit depredations; hence the prisoners at work were loaded with chains and iron collars and wore stripes. Their heads were shaved, and in every way they were rendered infamous. They were severely and strictly guarded. Yet, in spite of all, the prisoners in the streets used such vile language and insulted so many of the passers-by that this method had to be given up.¹³ Naturally, therefore, some other method of punishment had to be devised.

In 1790 the legislature of Pennsylvania provided that the Walnut Street prison should receive the prisoners from this old High Street jail. An attempt was made at the classification of prisoners based on the nature of the offense committed. The more serious offenders were to be confined in solitary cells, while the less hardened were to be lodged in large rooms. Those in the solitary cells were without labor; the other convicts were to work in the shops in association during the day. In the new Walnut Street prison the convict fared quite well. No irons or chains were allowed, and the guards were forbidden to use weapons of any sort. Corporal punishment was unknown within the prison. The rule of silence was enforced in the shops and at the table, but the convicts were allowed to talk in their dormitories at night in low tones until they went to bed.

¹¹ Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, N. Y., 1922), p. 11.

¹² *Ibid.*; pp. 10, 12, 13.

¹³ *Ibid.*, pp. 18, 19.

The rule of silence was not imposed upon the female prisoners incarcerated there. An attempt was made to treat the prisoners in a humane manner; something like an honor system was put into operation; small wages were paid the prisoners; reasonable hours of labor were enforced, and other humane and moderate measures were used in the conduct of this prison. So long as the numbers were not too large and efficient managers were in charge, it worked well.¹⁴

Here we have the beginning of the prison system in America. The significance of this prison lies in the fact that it became the model of prisons in the United States for the next forty years.¹⁵

In Philadelphia there was the greatest enthusiasm for this new prison. Order had been restored; the number of criminals on the streets had greatly decreased. In 1789 there had been 131 commitments to the old prison; by 1793 the number had fallen to forty-five. In the old prison during the four years preceding the new system at Walnut Street, 104 prisoners had escaped; during the four years of the Walnut Street régime, not a prisoner escaped. This institution was looked upon in these early days as a school of labor and an important discovery in the reformation of prisoners.¹⁶

However, after a few years the Walnut Street prison steadily deteriorated and became a colossal failure. The discipline relaxed, and the whole prison became a hotbed of disorder and a school of crime. The early success of the Walnut Street prison in Philadelphia, the model of so many of the early state prisons, was turned into failure because of a number of conditions:

1. The number of prisoners so greatly increased that it became impossible for the officers to give personal attention to them.
2. The increasing numbers made it impossible to keep up the early strictness of discipline.
3. The large numbers made it impossible to make the work of the prisoners as productive as in the early days.
4. Politics entered into the management, with the result that the high-minded and intelligent Quakers who had been on the board were displaced by political appointees with no particular interest in prison problems. The Philadelphia Society for Alleviating the Miseries of Public Prisons, which had been so influential in the early management of the prison, was no longer allowed to be a healthful influence and to keep alive public opinion with respect to prisons but became a party of protest and opposition.¹⁷

¹⁴ *Ibid.*, pp. 31, 32. These measures were adaptations of the measures found in the best English jails and bridewells. Webb, *op. cit.*, pp. 58, 59. Barnes, *The Evolution of Penology in Pennsylvania* (Indianapolis, 1927), Chs. II, III.

¹⁵ Lewis, *op. cit.*, p. 25; Teeters, *They Were in Prison* (Philadelphia, 1937), Ch. II.

¹⁶ Lewis, *op. cit.*, pp. 28, 29.

¹⁷ "The chief cause of the ultimate demoralization of the Walnut Street prison system lay, however, in the increasingly crowded condition of the institution. Persistent increase of commitments to the prison broke the system down. Much of the success of the system lay in the personal attention that could be given to prisoners by humanely-minded officers. This was possible in a prison of small numbers. But, whereas in 1793

The early success of the Walnut Street prison in Philadelphia led to its being copied by a number of other places; for example, Newgate prison in New York City, built by the state in 1796 and 1797; that of Massachusetts at Charlestown, just across the river from Boston, opened for the reception of prisoners in 1805; and even Auburn prison in New York during its early history. In each of these cases the result was failure.¹⁸

The New York State prison at Newgate having failed to produce the results expected of it, the board suggested in 1809 that another prison in the interior part of the state be built to care for the increasing numbers.¹⁹ That resulted in the building of Auburn prison.

On the establishment of a prison at Auburn in 1816, the same system was tried.²⁰ The same evil results became clear also at Auburn in 1822 and 1823.

It was due to the agitation of the Philadelphia Society for Alleviating the Miseries of Public Prisons, following the failure of the Walnut Street prison to fulfil their hopes for it as a penitentiary with a reformatory program, that ultimately two state penitentiaries in Pennsylvania were established. The Society first urged this step in 1818. The suggestion was adopted by the legislature in that year, and provision was made for the building of a penitentiary in the western part of the state. Recognizing the failure of the Walnut Street prison, they advocated *a new plan*. In this Western Penitentiary *not only were the prisoners to be confined in solitary cells, but they were also to be without work*. In the same year the legislature authorized the sale of the old Walnut Street prison, and in 1821 a law was passed providing for the building of the new Eastern Penitentiary on the plan of solitary confinement. This proposal of solitary confinement without labor seems to have been a counsel of despair by those who believed in the efficacy of solitary confinement and the impossibility, under the conditions that produced such swarms of convicts, to provide gainful labor for so many. The building was not occupied until 1829. By that time the Pittsburgh plan of solitary confinement without labor had proved to be impractical. They, therefore, decided to experiment again in the new Eastern Penitentiary by retaining the principle of *solitary confinement but with labor in the cells*.

The physical changes that made possible the beginning of another abortive experiment in Auburn came in 1821 with the completion of the

the commitments to the prison had been but 43 in 1801 the commitments had risen to approximately 150, with no increased accommodations in shops or cells. In addition, the substitution of solitary confinement for the death penalty was increasing not only the number of commitments to the prison, but also, naturally, was increasing the number of prisoners in the institution, because many of the terms of the prisoners were long." *Ibid.*, pp. 35-39.

¹⁸ *Ibid.*, pp. 40, 41, 119; Barnes, "The Historical Origin of the Prison System in America," *Journal of Criminal Law and Criminology*, Vol. XII, May, 1921, pp. 51, 52.

¹⁹ *Ibid.*, p. 57.

²⁰ De Beaumont and De Tocqueville, *The Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), pp. 3, 4.

northern wing made up of solitary cells for the confinement of the worst class of prisoners, but this was only an attempt to classify the prisoners on the early Walnut Street, Philadelphia, plan, which had failed there and which failed again here. The results here at Auburn were the climax of a demonstration that such a system must fail. Says a recent student of the system: ²¹

One has but to ask himself how long, under such unvarying separation from all human contact and feelings, one would retain his faith, and even his sanity? Indeed, this sentence to nothing less than a living death, and to the perpetual horrors of solitude without anything to do, drove irresistibly toward madness.

The sad failure of these early American prisons made a deep impression upon all who saw their results. De Beaumont and De Tocqueville, before the development of the Auburn and Pennsylvania systems, declared that "there did not exist a penitentiary system in the United States . . . but only a bad system of imprisonment." ²² Out of this failure of the early American prison grew experiments in two of the leading states to correct the evils of communication during work and sleep. These two experiments excited the interest of penologists all over this country and Europe. To these two epoch-making experiments we now turn: the Pennsylvania system developed in the Eastern Penitentiary at Philadelphia and the Auburn system worked out at the New York State prison at Auburn.

EARLY DEVELOPMENTS IN THE UNITED STATES

The Auburn System. This is the name applied to that system of prison construction and management which developed in the State Prison of New York at Auburn after the failure of the congregate confinement of ordinary prisoners and the solitary confinement for the worst offenders. How did the new plan arise?

As a result of allowing prisoners to work and sleep together in the same rooms the danger of outbreaks had become so great that an independent militia company was recommended in the village of Auburn. In 1821, after the wing of cells for solitary confinement without labor of the worst inmates had been completed, the legislature ordered a classification of the inmates into three grades. The first class was composed of the most hardened criminals. These were to be confined in cells night and day without work and thus allowed to think on their misdeeds, a plan that showed the influence of the theory that, we have seen, led to the establishment of the western Pennsylvania Prison. The second class, composed of the less incorrigible, were to spend part of their time in solitary confinement and another part in labor as a recreation. The third class, composed of the most hopeful men in the prison, were to work together in the daytime but were housed in separate cells at night. Thus at Auburn

²¹ Lewis, *op. cit.*, p. 82.

²² De Beaumont and De Tocqueville, *op. cit.*, p. 2.

there were now tried at the same time different plans for each of the three classes of prisoners. Gradually the method applied to this third class was used for all three classes. In time this system came to be called the Auburn or "silent" system.

By 1823 the new system was in full swing at Auburn. What were its essential elements?

1. Absolute non-communication between prisoners
2. Work in association in order to take advantage of industrial machinery and organization as in a factory in free society
3. Hard work for punishment, for health, and for reformation
4. Isolation in individual cells when not at work
5. Enforcement of silence in association and diligence in work enforced by punishment ²³

No matter how well the inmate behaved himself, he could not shorten the time of his imprisonment by a day; he could obtain no privileges above the worst offender against the rules. It was discipline by repression, labor under fear. We get a vivid picture of the Draconic harshness of the institution in the first annual report of the Boston Prison Discipline Society, written by the Rev. Louis Dwight, the secretary. It says: ²⁴

The unremitted industry, the entire subordination, and subdued feeling among the convicts, has probably no parallel among any equal number of convicts. In their solitary cells, they spend the night with no other book than the Bible, and at sunrise they proceed in military order, under the eye of the turnkey, in solid columns, with the lock march to the workshops, thence in the same order at the hour of breakfast, to the common hall, where they partake of their wholesome and frugal meal in silence. Not even a whisper might be heard through the whole apartment.

Convicts are seated in single file, at narrow tables with their backs toward the center, so that there can be no interchange of signs. If one has more food than he wants, he raises his left hand, and if another has less, he raises his right hand, and the waiter changes it. When they have done eating, at the ringing of a bell, of the softest sound, they rise from the table, form in solid columns, and return under the eyes of the turnkeys to the workshops.

From one end of the shops to the other, it is the testimony of many witnesses that they have passed more than three hundred convicts without seeing one leave his work, or turn his head to gaze at them. There is the most perfect attention to business from morning till night, interrupted only by the time necessary to dine—and never by the fact that the whole body of prisoners have done their tasks and the time is now their own, and they can do as they please.

At the close of the day, a little before sunset, the work is all laid aside, at once, and the convicts return in military order, to the silent cells where they partake of their frugal meal, which they are permitted to take from the kitchen, where it is furnished for them, as they returned from the shop. After supper, they can, if they choose, read the Scriptures, undisturbed, and can reflect in silence on the error of their lives. They must not disturb their fellow prisoners by even a whisper. The feelings which the convicts exhibit to their religious teacher are generally subdued feelings. . . . The men attend to their business from the rising to the setting of the sun, and spend the night in solitude.

²³ Lewis, *op. cit.*, pp. 86-87.

²⁴ *Ibid.*, pp. 87, 88.

What Were the Results of the Auburn System? There is no question that the Auburn system was productive. The fear of the lash under such relentless wardens as Elam Lynds accomplished that. To a fair degree the system also prevented contamination by the enforcement of the rule of silence in the workshops and by separate confinement in cells at night. But resting upon brute force it had very little reformatory effect on the inmates.

The Pennsylvania System. This Eastern Pennsylvania prison was authorized by the Pennsylvania legislature in 1821 but did not receive inmates until 1829. It provided for 250 prisoners, each of whom was entirely isolated from every other one. Each cell was large enough to provide room for work. The cells on the first floor each had an exercise yard—8 x 20 feet, surrounded by walls 11 feet 6 inches high—outside the wall of the prison, in which the prisoner could get light and air and some change from the monotony of the cell. In the cells above the first floor, an extra cell was provided in place of this exercise yard. However, from the beginning of the sentence to the end, the intention was that the prisoner should never see or communicate with another inmate. The only persons allowed access to him were the warden, the guard, the chaplain and representatives of some of the Philadelphia organizations interested in the welfare and care of prisoners. On occasion European visitors were allowed to talk with him. In each cell there was a Bible, the only reading matter permitted the prisoner. No letters could be written to the man's family or to any one outside; he was absolutely shut away from the world. On account of the disastrous results on mind and body of solitary confinement without work in the Western Penitentiary, labor in the cell was introduced. Thus arose the famous solitary or "separate" system, which was believed to solve the problem of contamination of one prisoner by another.

The theory at the bottom of this system of solitary confinement with labor contained these essential elements:

1. Experience in the Walnut Street (Philadelphia), Newgate (New York), Charlestown (Massachusetts), and other prisons had shown that communication in any way contributed to the contamination of the less hardened by the vicious, gave place to all kinds of plots, and marked the man upon his later return to society.

2. Solitary confinement without the opportunity of communication with fellow-prisoners would stop all such contamination.

3. Shut away from all his fellows, except those who were interested in his reformation, the opportunities for bringing the prisoner to a different state of mind would be greater. He would not be confirmed in his wickedness by the support of those equally or more criminal than himself.

4. Living in silence day and night, he would inevitably reflect upon his sins and resolve never more to return.

5. Labor in the cell would enable him to contribute to his support and at the same time would relieve the dreadful monotony of solitary confinement and perhaps contribute somewhat to his reformation.

In general, such were the considerations back of the plan.

What were the results of this system, which seems so terrible to us to contemplate? Here is a report of conversations of De Beaumont and De Tocqueville with one of the prisoners when they visited the institution in 1831, two years after it had been opened: ²⁵

No. 00—Aged forty. Imprisoned for robbery of the highway with arms in his hand; seems very intelligent; told us his story in the following terms:

"I was fourteen or fifteen years old when I arrived in Philadelphia. I am the son of a poor farmer in the west, and I came in search of employment. I had no acquaintance, and found no work; and the first night I was obliged to lie down on the deck of a vessel, having no other place of rest. Here I was discovered the next morning; the constable arrested me, and the mayor sentenced me to one month's imprisonment as a vagrant. Confounded during my short imprisonment with a number of malefactors of all ages, I lost the honest principles which my father had given me; and on leaving the prison, one of my first acts was to join several young delinquents of my own age, and to assist in various thefts. I was arrested, tried, and acquitted. Now I thought myself safe from justice, and, confident in my skill, I committed other offenses, which brought me again before the court. I was sentenced to an imprisonment of nine years in Walnut Street prison."

Ques. Did not this punishment produce in you a feeling of the necessity of correcting yourself?

Ans. Yes, Sir; yet the Walnut Street prison has never produced in me any regret at my criminal actions. I confess that I never could repent them there, or that I ever had the idea of doing it during my stay in that place. But I soon remarked that the same persons reappeared there, and that, however great the finesse, or strength of courage of the thieves was, they always ended by being taken; this made me think seriously of my life, and I firmly resolved to quit for ever so dangerous a way of living, as soon as I should leave the prison. This resolution taken, I conducted myself better, and after seven years' imprisonment I was pardoned. I had learnt tailoring in prison, and I soon found a favourable employment. I married, and began to gain easily my sustenance; but Philadelphia was full of people who had known me in prison; I always feared being betrayed by them. One day, indeed, two of my former fellow prisoners came into my master's shop and asked to speak to me; I at first feigned not to know them, but they soon obliged me to confess who I was. Then they asked me to lend them a considerable sum; and on my refusal, they threatened to discover the history of my life to my employer. I now promised to satisfy them, and told them to return the next day. As soon as they had gone, I left the shop also, and embarked immediately with my wife for Baltimore. In this city, I found easy employment, and lived for a long time comfortably enough; when one day my master received a letter from one of the constables in Philadelphia, which informed him that one of his journeymen was a former prisoner of Walnut Street. I do not know what could have induced this man to such a step. I owe to him my being now here. As soon as my employer had read the letter, he sent me indignantly away. I went to all the other tailors in Baltimore, but they were informed of what had happened, and refused me. Misery obliged me to seek labour on the railroad, then making between Baltimore and Ohio. Grief and fatigue threw me after some time into a violent fever. My sickness lasted a long time, and my money was at an end. Hardly recovered, I went to Philadelphia, where the fever again attacked me. When I was convalescent, and found myself without resources,

²⁵ De Beaumont and De Tocqueville, *op. cit.*, pp. 194-196.

without bread for my family; when I thought of all the obstacles which I found in my attempts to gain honestly my livelihood, and of all the unjust persecutions which I suffered, I fell into a state of inexpressible exasperation. I said to myself: Well then! since I am forced to do it, I will become a thief again; and if there is a single dollar left in the United States and if it were in the pocket of the president, I will have it. I called my wife, ordered her to sell all the clothes which were not indispensably necessary, and to buy with the money a pistol. Provided with this, and when I was yet too feeble to walk without crutches, I went to the environs of the city; I stopped the first passenger, and forced him to give me his pocketbook. But I was arrested the same evening. I had been followed by the person whom I had robbed, and, my feebleness having obliged me to stop in the neighbourhood, there was no great pains necessary to seize me. I confessed my crime without difficulty, and I was sent here.

Ques. What are your present resolutions for the future?

Ans. I do not feel disposed, I tell you freely, to reproach myself with what I have done, nor to become what is called a good Christian; but I am determined never to steal again, and I see the possibility of succeeding. If I leave in nine years this prison, no one will know me again in this world; no one will have known me in the prison; I shall have made no dangerous acquaintance. I shall be then at liberty to gain my livelihood in peace. This is the great advantage which I find in this penitentiary, and the reason why I prefer a hundred times being here to being sent again to the Walnut Street prison, in spite of the severity of the discipline which is kept up in this penitentiary.

Charles Dickens, on his visit to America in 1842, visited the Eastern Penitentiary of Pennsylvania and wrote concerning it as follows: ²⁸

"In its intention, I am well convinced that it is kind, humane, and meant for reformation, but I am persuaded that those who devised this system of Prison Discipline and those benevolent gentlemen who carry it into execution, do not know what it is that they are doing. I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers; and in guessing at it myself, and in reasoning from what I have seen written upon their faces, and what to my certain knowledge they feel within, I am only the more convinced that there is a depth of terrible endurance in it which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow creature. I hold that this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body; and because its ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the flesh; because its wounds are not upon the surface, and it extorts few cries that human ears can hear; therefore I the more denounce it, as a secret punishment which slumbering humanity is not aroused up to stay.

On the other hand, it must not be forgotten that there were no whips or other methods of punishment in the Eastern Penitentiary. The punishment was mental and social rather than physical.

Auburn and Pennsylvania Systems Compared. These two systems of prisons, the Auburn or the Silent System, and the Pennsylvania, or the Separate System, were not so radically different as the controversy that

²⁸ Charles Dickens, *American Notes* (New York, 1887), pp. 297-298.

raged over them for so long would seem to imply. The systems were more alike from the beginning than they were different from each other. Both prevented the prisoners' communicating with one another. Both locked the prisoners in separate cells at night. Both believed in the efficacy of labor. The basic difference between the two systems was that under the Pennsylvania system the convicts were separate from each other every moment of their stay in the prison. When they got out no prisoner could be recognized by another because he had never had an opportunity to see him. On the other hand, Auburn prisoners knew each other, although they could not communicate with each other except upon pain of punishment.²⁷ Both attempted to socialize the inmates with the minimum of social contacts.

Whence Arose These Two Systems That Seem to Be New in Penal History? It has often been assumed that they were original American inventions. It is probably true that the peculiarities of the two systems were products of American soil. There is evidence, however, that both were simply developments of European precedents.²⁸

What Was the Comparative Influence of These Two Prison Systems? The influence of the Auburn system was very great, especially in the United States. It attracted much attention also in Europe.²⁹ However, while it was mentioned favorably by such European authors as De Beaumont and De Tocqueville, Europe so far as she was influenced by American examples followed the Pennsylvania plan. On the other hand it was the Auburn plan that was copied most largely in the United States; to-day all prisons in the United States have adopted the Auburn system.

How does it happen that, while European visitors to American prisons were almost unanimous in their opinion that the Pennsylvania system was the better of the two, the various states of this country have followed the Auburn system? The explanation of the latter's popularity in America lies in the following considerations: (1) In its early days it was administered by exceptionally able wardens. Captain Lynds, Gershom Powers, and others like them were men who would have made a success of any system. (2) Such a prison was economical to build. Many more men could be housed for the same expenditure of money than by the Pennsylvania system. (3) It was more productive industrially than its competitor. The only prisons in the early history of prisons in the United States that paid their way were those built and administered on this basis. (4) It had unusual publicity. The annual reports of its wardens made a fine showing. The Rev. Louis Dwight, for so long a time the secretary of the Boston Prison Discipline Society, was an earnest advocate of this system. He is described as a "zealous, untiring, unreserved adherent

²⁷ Lewis, *op. cit.*, pp. 119, 125.

²⁸ *Ibid.*, p. 81. As we have seen above, the essentials of this system were proposed by Blackstone and Eden in 1799, and before that certain of these features were introduced in some of the new English county jails and bridewells. See Ives, *op. cit.*, Ch. V.

²⁹ *Ibid.*, p. 78.

of the system he had espoused, almost with deliberate blindness seeing for many years no faults in a faulty system." He traveled through many states interested in constructing prisons, lecturing, advising, and urging the adoption of the Auburn system. This publicity, coupled with the facts that the system was more economical to build and that with the increasing displacement of the domestic system of manufacture by machinery in a factory system it was more productive economically, made it most natural that the Auburn system should be widely adopted in the United States.³⁰ That the Pennsylvania system should have been favored by the European countries was largely due to the great weight of influence of most of the representatives sent by various European states to study the two systems found here.³¹

Other Early American Contributions to Prison Development. Since there were very few precedents, it was to be expected that prison administrators should try various experiments. Out of these grew procedures some of which have persisted down to the present. In Georgia in January, 1832, Colonel Mills instituted what was exceedingly rare, if not entirely unique, in this period, namely, (1) *a system of rewards*. The privileges of the yard on Sunday to the good-conduct prisoners, and the privilege of working for themselves during the ninety-minute period allowed for dinner were introduced.³²

In the Kentucky penitentiary (2) *a marking system* was introduced. Inmates were credited for their work and debited for clothing and maintenance, a proportionate share in the expenses of retaking escaped convicts, and court costs.

In the penitentiary of Tennessee in 1833 was introduced (3) *commutation of sentence*, by what is now known as "good time." Lewis is authority for the statement that such a practice existed in no northern prison at the time. In this prison deduction of two days in every month was made for the term of the sentence and, conversely, for each day of punishment inflicted, five days were added to the sentence.³³

New Hampshire, which built its first prison at Concord in 1812, contributed (4) *a new type of successful prison manager* in the person of its famous warden from 1818 to 1825, Moses Pilsbury. While he was a strict disciplinarian, he differed from wardens like Elam Lynds in being a very humane man. He looked after his charges in sickness, tried to instruct the prisoners, and endeavored to use religion for their benefit. Moreover, he was a good manager and turned a deficit into a surplus.

Vermont's prison, built in 1809 and remodelled in 1831 along the lines of Auburn, provided (5) *a stint for each prisoner with compensation*

³⁰ *Ibid.*, pp. 226-228.

³¹ De Beaumont and De Tocqueville, *op. cit.*, p. 106. See also pp. 59, 60, 88. See Barnes, *Evolution of Penology in Pennsylvania* (Indianapolis, 1927), pp. 170-176.

³² Lewis, *op. cit.*, p. 265.

³³ *Ibid.*, p. 268. 1836 according to McKelvey, *American Prisons* (Chicago, 1936), p. 43.

for overwork, (6) tobacco for well-behaved prisoners, (7) the privilege of writing letters to friends, and (8) frequent visitors.⁸⁴

Massachusetts in those early days, as well as more recently, tried out some interesting methods. A modern feature adopted during this period of the Massachusetts State Prison was (9) the use of musical instruments by the inmates in rooms lodging from six to ten prisoners. They were also permitted to have lights in their rooms. (10) *In 1826 the legislature provided for the city of Boston to send its juvenile delinquents, no longer to state prison, but to the House of Correction in South Boston.* In 1829 the Rev. Jared Curtis, as chaplain at the Massachusetts prison at Charlestown, organized (11) *a Sunday school, teaching not only the Bible but also the elements of an education.* About the same time he instituted (12) *a chapel service morning and evening in the prison.* A law was passed in 1830 allowing (13) *the transfer of insane people from the county jails in Massachusetts to the state hospital established that year in Worcester.* It was not until 1844 that an act was finally passed that allowed the transfer of insane convicts from the state prison to the institution for the insane. In 1845 (14) *a state regent was appointed to counsel discharged prisoners, help them to secure employment, and endeavor to get them back into society on a sound and permanent basis.* In the Massachusetts State Prison we find (15) *the first prison library,* (16) *the first prison orchestra,* and (17) *music, both instrumental and vocal, at the church service on Sunday,* (18) *small gardens each cultivated by a prisoner, who was permitted to eat what he raised,* and (19) *a society among the convicts for moral improvement and mutual aid, a forerunner of the later league developed in Sing Sing Prison under Warden Osborne.*⁸⁵

In the new Connecticut State Prison built at Wethersfield in 1826-1827 under Amos Pilsbury we find the beginnings of (20) *the first honor system in American prisons.* Men were treated somewhat as are our prison trustees at the present time and were allowed to go outside the walls for various duties.

The Maryland prison in this period was characterized by two important achievements: (21) It was the first prison in which a matron for the female inmates was to be found, and in this institution was established (22) *an educational system for all the prisoners.* All of Sunday was devoted to school except the time spent in church. On week-days the prisoners were allowed to read and study after their working hours. In 1833 it is reported there were 211 convicts in the school on Sunday who originally had been unable to read or write, instructed by ten volunteer teachers from the city of Baltimore.⁸⁶

⁸⁴ Reynolds, *Recollections of Windsor Prison* (Boston, 1834), cited in Lewis, *op. cit.*, p. 157.

⁸⁵ Lewis, *op. cit.*, Ch. 14.

⁸⁶ *Ibid.*, Ch. 17.

This brief review is sufficient to show that already in these early American prisons experiments were going on that had their effect upon the prisons of the United States in later years: "good time" as an incentive to good conduct, emphasis upon productive labor, the beginning of prison schools, prison libraries, and certain recreational periods, permission to prisoners to cultivate plots of ground, religious and moral instruction with regular chaplains in some of the prisons, a trial of payment to prisoners as an incentive to industry and to enable them to have something upon their discharge or to send something to their families, the beginning of a new kind of disciplinarian governing his charges by firmness and yet with a sincere interest in their welfare, the beginning of a plan to make the prisoners subject to the ordinary economic motives on the outside by charging them for the expenses incident to their imprisonment and allowing them a certain sum for their wages, and the beginning of a self-government association.

Unfortunately many of these early and promising experiments went down in the maelstrom of incapacity and mediocrity characteristic of prison history in the United States from about 1835 to 1865. Some of these experiments survived the test of experience and a renovated penal philosophy. Following the War Between the States a number of the American penologists visited Europe and learned about certain of the developments there, especially the "Irish system" under Croften, and brought back to this country ideas that gradually modified penal theory and practice here. The formulation of this new penology is to be seen in the declaration of principles adopted by the Prison Congress in 1870 at Cincinnati. Let us look at some of the more recent developments.

LATER DEVELOPMENTS IN THE UNITED STATES

As we have seen, at that date there were two general systems in operation: the Pennsylvania, or "separate system," and the Auburn, or so-called "silent system." As time has gone on, no prison in the country has retained the Pennsylvania system. The Eastern Penitentiary of Pennsylvania, where it originated, has finally abandoned it. The other prisons that have grown up in the United States, while they vary in details, have followed the silent system of Auburn.

Gradually a number of changes have occurred in the prisons of the United States, partly in the interest of humanitarian treatment of the inmates, partly for the improvement of discipline, and partly looking toward the reformation of the prisoners. The important changes are as follows:

The lock-step has been done away with in most prisons. It was introduced into the Auburn prison by Elam Lynds about 1821. The intention of the lock-step was to prevent violence on the part of the prisoners. It has been found, however, that this method of marching was not necessary to preserve order; now the prisoners march in military formation, two

abreast. This change was begun by Johnson, warden of Sing Sing prison in 1900.³⁷

Instead of the convicts being fed in their cells, as was customary quite generally at first, they are now usually fed in a *common dining-room*. Silence at meals, however, is still maintained in most of the prisons, although a few have found it possible to allow the prisoners to talk at meals. The reason for silence at meals is that many wardens believe the dining-room is the place in which riots are most likely to break out. The prisoners can use the dishes as weapons and occasionally a serious riot does occur in spite of the rule of silence. Cafeterias have been introduced in some prisons in order to allow prisoners a wider choice of food in their daily meals.

While some changes have been made in the structure of the prisons, most of them still follow the cell block enclosed by a building. In the structure of the newer prisons greater attention has been given to sanitary requirements. In the old prisons the cell door was narrow and in many cases admitted neither air nor light. Later a barred door allowed some ventilation and provided easy inspection from the outside. In the more recent prisons the whole front of the cell is made up of bars so that ventilation is very much better. For a long time a wash basin and a bucket were the only toilet conveniences. In the newer prisons each cell has a lavatory with flowing water and a sanitary toilet. In the best prisons of the present day in the United States a good mattress is provided and the prisoner has a sufficient number of blankets. Moreover, heat is supplied in sufficient quantity so that the suffering from cold characteristic of the older prisons is no longer to be found. In addition, the heating system provides ventilation in the wintertime.

Furthermore, instead of small, narrow windows that admit a minimum of sunlight into the cell house, the newer prisons have large windows extending almost from floor to ceiling of the cell house, admitting the maximum of sunlight. Frequently, however, cells may still be found in the newer buildings into which the sun does not shine at any time of the day. Efforts are being made so to build the cell blocks that the sun will shine into the cell either in the forenoon or in the afternoon.

The strict rule of silence is gradually fading out. No warden claims now, as Elam Lynds did at Auburn and at Sing Sing, that there is no communication, but it is reduced to a minimum.³⁸

Since the War Between the States in many of the Southern states there have grown up *the state prison farms, and the county and state chain-gangs for road work*. These particular developments took place largely because the poverty of the South following the war prevented the adop-

³⁷ Pettigrove, "State Prisons in the United States," in Henderson, ed., *Penal and Reformatory Institutions*, Eighth International Prison Congress (New York, 1910), pp. 36, 45.

³⁸ Pettigrove, *op. cit.*, p. 47.

tion of prison systems in those states that did not already possess them. The chain-gang, especially in the counties, has been subject to grave abuse and represents a development not to be encouraged.³⁹ Recently farms and camps have been developed in connection with many of the state prisons in the North also, and around some of the county jails, or houses of correction, in both the Northern and Southern states. In the South the chain-gangs are gradually disappearing as state institutions, and many of the county and municipal chain-gangs have been displaced by farms, sometimes with incidental industries attached.

Early in the history of prisons in the United States *an attempt was made to classify the prisoners* within those institutions built upon the Auburn plan. This project was found no more possible in the United States than in England. Most of the states, however, do grade the prisoners for purposes of discipline. While all classes work together in the common shops, those in the higher grades have special privileges.

The *classification committee* system has been introduced into some prisons and other correctional institutions in the last few years. As used in these institutions the term is a most important refinement of the old term *classification*. The structure and function of this committee will be discussed in the following chapter.

The *grading system*, while varying from institution to institution is essentially as follows: There are three grades of prisoners. When admitted the inmate enters the second. By good conduct he advances into the first, or for bad conduct he is degraded to the third. Sometimes there is some difference in the style of uniform worn. Privileges vary decidedly in the three grades, for example, writing letters, receiving visits and tobacco, and other privileges that relieve the monotony of prison life.⁴⁰

Of vastly more importance than classification within the institution is *classification by institutions*. In 1824 Massachusetts, New York, and Pennsylvania took out of the prisons and placed in the houses of refuge the juvenile delinquents. From that time on, the segregation of juveniles from adult criminals by means of special institutions for the former has gone on apace.⁴¹ Next occurred the segregation of insane criminals in institutions for the insane. In 1826 the Prison Discipline Society of Boston called attention to the presence of lunatics in the county jails. However, the movement to provide special institutions for the criminal insane was late in developing. As late as 1845 the only state that had a good system of transfer for the insane from prison to state asylum was Massachusetts.

The segregation of women from male criminals in separate institutions

³⁹ Gillin, *Taming of the Criminal* (New York, 1931), Ch. 9; Steiner and Brown, *The North Carolina Chain Gang* (Chapel Hill, N. C., 1927), Chs. V, VI.

⁴⁰ Pettigrove, *op. cit.*, p. 51. Bentham seems to have been the first to suggest division of prison inmates into three grades in his "A View of the Hard Labor Bill." See his *Works* (Edinburgh, 1843), Vol. IV, p. 26.

⁴¹ See Ch. XXXI, *infra*.

developed very much later. Indiana, in 1869, and Massachusetts, in 1874, were the first to build separate prisons for women.

In 1876 there was opened at Elmira, N. Y., the first reformatory in the United States for adults. Very recently the mentally defective delinquent has been segregated from other prisoners in special institutions in a number of states. This important classification by institutions should be made in every state.

In a number of states and in the Bureau of Prisons of the United States as well as in a number of the European countries there has been further development of classification by institutions. These experiments in some of the European countries I described in my *Taming the Criminal*. In this country the differentiation between institutions has developed chiefly in the more populous states, like New York, Massachusetts, and Pennsylvania, and in the federal prison system. These various institutions have been designated by the terms *maximum security*, *medium security*, and *minimum security*. The former are for those prisoners most dangerous and most apt to escape, the medium security for those less dangerous, and the minimum security institution for those who can be trusted. These separate institutions can also serve the purpose of adapting the treatment to the needs of the individual as revealed by the study of the classification committee. The development of farms and camps often serve the purpose of such institutional classification.

Prison discipline has been very much modified in the course of time. Elam Lynds enforced silence in Auburn and Sing Sing by the lash and other methods of corporal punishment. In other prisons, in addition to whipping, the shower, the sweat box, and other inhuman devices were used. Donald Lowrie has described the inhuman strait-jacket that was once used in San Quentin.⁴² In spite of all that has been done, however, in many prisons even at the present time discipline is unnecessarily brutal and inhuman.⁴³ The trend of punishment of prisoners at the present time is toward deprivation of privileges and in extraordinary cases solitary confinement on bread and water.

Another important change that has taken place in the prisons is in *the dietary*. When it was believed that prisons should be made as deterrent as possible, the only reason why the prison official should see that the prisoners had good food was that their economic productivity might not be interfered with. In general, however, it can be said that in the prisons more and more attention has been given to proper dietary for the inmates. It has been observed that men in restraint need a greater variety of food than free men. The testimony of a number of wardens I have consulted is that the prisoner's health improves in prison, partly by reason of his food but more possibly on account of regular life. In spite of this progress,

⁴² Lowrie, *My Life in Prison* (New York, 1912), pp. 69-72.

⁴³ Petti-grove, *op. cit.*, pp. 54, 55.

however, prison dietaries leave much to be desired, as is shown by the Prison Survey Committee of New York.⁴⁴

In the early days, in both Auburn and the Eastern Penitentiary of Pennsylvania, no *communication with relatives and friends*, either by visit or by letter, was permitted. In most prisons at the present time prisoners in the second and first grades are permitted to write letters and to receive letters from relatives and friends. Those who are not in the third grade are also permitted to receive visits at certain times. An increasing number of our prisons and reformatories are liberalizing the privileges of visiting and writing allowed the prisoners, although much still remains to be done.⁴⁵

Early in the nineteenth century the need of *a library for the use of the prisoners* was felt. The development of prison libraries is one of the most promising trends in the history of prisons in the United States. While in many prisons the library is still very poor, in a great many a good deal of attention is given to providing reading matter for the men in their cells. *The Handbook of American Prisons and Reformatories, 1933*, shows a very commendable growth in the number of institutions having libraries and a promising development in the quality of the books and magazines to be found there.⁴⁶

Early in the history of prisons in the United States, it was noticed that large numbers of prisoners could neither read nor write. Even in the early days of the Eastern Penitentiary of Pennsylvania the prisoners were taught to read, in order that they might read their Bibles. For a long time, however, no great emphasis was placed upon *an educational program in the prisons*.

Maryland had the first prison school in the United States (1829). The prison board said that this educational system resulted in "the entire destruction of the improper indulgences and corrupt association, to which exemption from labor on Sunday afforded them more opportunity than on any other day." In certain of the more progressive prisons and reformatories a very good beginning of an educational program has been made. The outstanding institutions in this country in 1933 in the educational field for prisoners were the federal institutions, San Quentin, Cal., and Waupun, Wis.⁴⁷

Another development of considerable importance is the privilege of *recreation* at stated times within the prison. Gideon Haynes, warden of the state prison at Charlestown, Mass., was one of the first to allow the

⁴⁴ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), p. 99.

⁴⁵ For details concerning the present situation see Ch. XXVII, *infra*. See also "Mail Privileges for Prisoners," *The Survey*, Aug. 19, 1916, pp. 519-520.

⁴⁶ MacCormick, "Planning a Library for Your Institution," *News Bulletin*, No. 4 (August, 1936); Jones, *2500 Books for the Prison Library* (Minneapolis, 1933).

⁴⁷ *Handbook of American Prisons, 1933* (New York, 1939); MacCormick, *The Education of Adult Prisoners* (New York, 1931), and "Education in the Prisons of Tomorrow," *Annals of the American Academy of Political and Social Science*, Sept., 1931, p. 72.

prisoners to assemble together on a holiday. On July 4, 1864, the prisoners were assembled in the chapel for the usual services; then they were taken into the yard and the warden announced to them that they could have an hour's liberty in which they could enjoy themselves in any way they wished. He describes the result as a great success. The men, restrained to keep silence for so long, shook hands, embraced one another, danced, shouted, and cried. Warden McClaughry of Joliet, Ill., used the same plan in 1877. These seem to have been the first experiments in allowing prisoners to meet together in ordinary intercourse.⁴⁸ Since that time a number of prisons have organized recreation on stated days.⁴⁹

The practice of granting "good time" in commutation of the sentence as a result of good behavior and industry in the prisons has become practically universal.

In connection with *prison labor systems*, to be discussed later, some very interesting experiments have taken place in working prisoners outside the prison walls, either on prison farms or upon public roads. The prisoners working in this way are usually carefully selected and are very desirous of the greater freedom to be found on the farms and in the road camps.

A development has taken place in *the aims of punishment* during the 150 years of penological history. Occasionally, even in the earliest period, reformation was recognized as an aim. We must not forget that the original idea back of the penitentiaries was that of reformation; that indeed was the essential difference between a prison and a penitentiary. As early as 1787 at the home of Benjamin Franklin in Philadelphia, Dr. Benjamin Rush read a paper on penal administration. According to him the purposes of punishment were (a) the reformation of the offender; (b) the deterrence of others from crime by the spectacle of public punishments; and (c) the protection of society by removing from its midst those who by their tempers and their crimes showed that they were unfit to live at large.⁵⁰

Many of the early prison reformers expected reformation through the influence of religion. Elam Lynds of Auburn was an exception. He went so far as to say that he did not believe in complete reformation except with young delinquents. He told De Beaumont and De Tocqueville that "nothing in my opinion is rarer than to see a convict of mature age become a religious and virtuous man. I do not put great faith in the sanctity of those who live in prison."⁵¹ The Boston Prison Discipline So-

⁴⁸ Pettigrove, *op. cit.*, p. 63.

⁴⁹ Lawes, *Life and Death in Sing Sing* (Garden City, N. Y., 1928), p. 75, and *Twenty Thousand Years in Sing Sing* (New York); Garrett and McCormick, *Handbook of American Prisons and Reformatories*, 1929 (New York, 1929), pp. 35, 406, 416, 426, 436, 454, 468, etc.; *Report on Penal Institutions, Probation and Parole*, No. 9, National Commission on Law Observance and Enforcement (Washington, D. C., 1931), pp. 268, 271.

⁵⁰ Lewis, *op. cit.*, p. 19.

⁵¹ De Beaumont and De Tocqueville, *op. cit.*, Appendix XI, pp. 201-202.

ciety centered its agitation upon two specific matters: security against escape by inmates and productiveness of their labor.⁵²

In spite of all that has been written and said in recent years, the predominant aims of society in inflicting punishment upon prisoners remain retribution, social security, deterrence and, if possible, reformation. More and more, however, the last is receiving emphasis. Thus, in the law of the state of Wisconsin, the purpose of the state prison is said to be as follows: "The state prison shall be the general penitentiary and prison for the punishment and reformation of all offenders committed and sentenced according to law by any court in the State of Wisconsin or any court of the United States held in the districts of Wisconsin to imprisonment therein."⁵³ Moreover, as an indication that states contemplate the reformation of prisoners, it is provided by many that even a prisoner sentenced by the courts for life may be paroled after a certain number of years.

The honor system was devised to develop personal responsibility and to try out the men in preparation for free society. The trustees on the whole have responded favorably to the increased liberty thus provided. In increasing numbers men are placed on their honor on prison farms in camps connected with the prison and on other work outside the walls. It remained, however, for Thomas Mott Osborne to develop a *system of self-government* in his Mutual Welfare League, which he inaugurated in Auburn prison, New York State, in 1913. Under this system the prisoners form an organization in which they have the responsibility of trying and punishing inmates for breaking the rules.⁵⁴ Where it still exists it has been modified in many respects. Usually it is now limited to a few aspects of prison life.

Recently a more important development has taken place in a number of our prisons and reformatories—the *introduction of psychological and psychiatric examinations of the inmates*. If the prisoner is to be treated individually, his mental and emotional make-up must be understood. While progress has been made in some of our institutions, much still remains to be done along this line.

Finally, there has recently appeared a tendency in some states to select *wardens and other prison officials* for their capability rather than for their political qualifications. Consider the absurdity of appointing as the president of a college or university and as teachers in such an institution those who have not prepared themselves by any course of study or discipline but who are politically acceptable to the party in power. Is it any less absurd to appoint to the important position of head of a prison or reformatory a man whose only qualification is his political affiliation

⁵² Lewis, *op. cit.*, pp. 328-329.

⁵³ *Laws of Wisconsin Relating to Public Charities* (Madison, Wis., 1920), Section 53.01, p. 107.

⁵⁴ Osborne, *Society and Prisons* (New Haven, Conn., 1916), Ch. 4. Barnes and Teeters, *New Horizons in Criminology* (New York, 1943), pp. 790, 791.

or service? The parallel between the two kinds of institutions is not far-fetched. The college as an educational institution is for the formation of character and the development of ability. The reformatory and the penitentiary are for the correction of defects that have appeared in the development of young people. Does the first require any higher abilities than the second class of institutions?

Perhaps there was justification at one time for this difference in the qualifications demanded of the officials in the two kinds of institutions. Once there were no *institutions training men to deal with prisoners*. That time has passed. Scarcely a great university in this country lacks a department of sociology and a department of psychology with a large enrolment of graduate students who are being trained to handle difficult personalities. Yet so backward are we in our thought concerning the nature of a prison or a reformatory that we have failed to see the connection between the educational institution called a university and the correctional one called a prison or a reformatory. There are hundreds of young men and young women to-day in the graduate schools of our universities who, had we but the wit to see it, are infinitely better prepared to undertake this delicate and difficult task of guiding back into useful lives the criminals than those who to-day are placed at the head of these institutions and who are serving as the guards and officials therein. May we not hope that the time will soon come when as great attention will be given to the educational qualifications of wardens, guards, and teachers in our correctional institutions as to those of the presidents, deans, and teachers in our colleges and universities?

Japan started the first *school for prison officials*; England developed a training system for prison officials later; and at the present time the federal prison service and a few of the states have begun encouraging experiments to provide training courses for prison officials.⁵⁵

DEVELOPMENTS IN ENGLAND

To understand what took place in England, we must keep in mind the American experiments just described, for when England came to the place where she was forced to build prisons, she endeavored to learn from the experiments carried on in the United States.⁵⁶ A law was passed in 1839 that made possible separate instead of congregate confinement in the local prisons, which had been the previous practice.⁵⁷

⁵⁵ Gillin, *op. cit.*, pp. 29-32; Hart, *Training Schools for Prison Officers* (New York, 1930); Wallack, *The Training of Prison Guards in the State of New York* (New York, 1938); Gill, *Prison Officer Training; Introductory Course*, U. S. Office of Education (Washington, D. C., 1940); Kendall, La Vallee, and McKendrich, *Advanced Training for Prison Officers*, Department of Correction, State of New York (Albany, N. Y., 1941 and 1942), 2 vols. (mimeographed); Kendall, La Vallee, and Byrnes, *Training Course for Prison Guards*, Third Edition, Department of Correction, State of New York (Albany, N. Y., 1940) (mimeographed).

⁵⁶ Ruggles-Brise, *The English Prison System* (London, 1921), p. 27.

⁵⁷ *Ibid.*, p. 27.

As the failure of transportation became apparent, it was necessary to substitute something in its place. Crawford, Inspector of Prisons, visited the United States in the 1820's. As a result of what he saw here the Pentonville Prison was opened on the cellular plan in 1842, thus following the Pennsylvania system with *separate confinement for the first period of sentence*, ranging from fifteen to eighteen months. This was followed by *employment on public works*. The hulks were abolished at this time. *Certain gratuities to the prisoner* to encourage good conduct and industry, as well as to provide him with a certain amount of money upon his discharge, were established at this time.⁵⁸ The final period of the sentence was to be served on transportation to a colony. This plan worked very well so long as those who had finished the first two periods of their confinement could be removed on ticket-of-leave to a colony. However, in 1851 Van Diemen's Land, the last colony except Western Australia that would receive British convicts, refused longer to accept the ticket-of-leave men. What could now be done with the 8,000 male convicts? In 1853 a law was passed establishing penal servitude instead of transportation. The Act of 1857 made another change. Transportation was now abolished. Hence the third part of the sentence, hitherto served in a colony to which he had been transported, the prisoner served in the prison in England. By good conduct and industry he could shorten this period. The Act of 1857 also introduced the *progressive stage system*. Under this system, nine months were spent by each inmate in separate confinement. Then the remainder of the sentence was divided into three different periods, the passage from one to the next being based on conduct and rewarded with gratuities, badges, and a difference in dress. This system was devised by Sir Joshua Jebb, who took great interest in the prison system at this time, and by him later was introduced into Ireland. There it was developed by Sir Robert Crofton and became known as the Irish system.⁵⁹

Later, to the Irish system was added an *intermediate stage* for prisoners about to be discharged. In this stage they lived in comparative freedom, separate from the other prisoners, with the purpose that they should be prepared for free life in society. From this intermediate stage the prisoner was discharged, but with the proviso that he should be supervised by the police for a certain length of time. A plan was also developed by which he was found employment after he was released from the intermediate stage.⁶⁰ Thus, by 1860 the essential features of the English prison system had been quite well settled. It remained to consolidate into one the diverse units of the system. The first step in this direction was taken by the Act of 1865.

This Act concerned itself chiefly with *an attempt to set standards* for

⁵⁸ *Ibid.*, p. 27.

⁵⁹ *Ibid.*, p. 29.

⁶⁰ *Ibid.*, p. 30.

the management and discipline of prisons, local as well as convict, by providing for the national inspection of local prisons and by setting up in detail the standards to which they were to conform—standards enforced by refusal of grants authorized to the local prisons from the national treasury.⁶¹ Experience showed that these regulations did not go far enough, although there were two good results: (1) Eighty of the 193 local prisons were closed, and (2) *the mark system*, which Maconochie had developed in Norfolk Island, was introduced into English prisons. The mark system was described in 1921 by Sir Evelyn Ruggles-Brise, then Chairman of the Prison Commission for England and Wales, as “the fundamental principle of the Penal Servitude System.”⁶²

The first important step in the actual *unification* of the English prison system was taken in the Act of 1877. This law put all local gaols in England and Wales into the hands of a National Commission for Local Prisons, to be appointed by the Home Secretary. Since 1850 the convict prisons had been under a national commission.⁶³

The next steps in the development were the passage of *the Habitual Criminals Act in 1869*, and the Prevention of Crimes Act of 1871, whereby greater facilities were given to the police for the detection of habitual criminals and for their longer detention.⁶⁴

In 1878 a Royal Commission appointed to look into the prisons made its report. Out of this report came a number of important modifications in the management of prisons. Thus in 1879 the prison commission established what is known as *the “star” class*, in which were placed all first offenders.⁶⁵ The commission recommended *greater severity* in the treatment of prisoners, as set forth in the law of 1865. It suggested *cutting down the period of a convict sentenced for the second time from seven to five years*. It suggested *unpaid and independent inspection of the local prisons*.⁶⁶ In 1879 it was recommended that *weak-minded male prisoners be segregated in a special institution*, a recommendation that was not carried out until 1897.⁶⁷ In 1891 changes were made whereby *prisoners sentenced to three years could take advantage of the progressive stages*. Before this time no prisoner sentenced to less than six years could profit by it.⁶⁸ Moreover, in 1891 *the classification scheme* that had been begun by the device of the star class in 1879 was extended to two other classes: the intermediate class and the recidivist class. Furthermore, there was added to these classes of prisoners a long sentence division for men who

⁶¹ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p. 55; Webb, *op. cit.*, p. 190.

⁶² Webb, *op. cit.*, p. 192; Ruggles-Brise, *op. cit.*, p. 31, 35; *Encyclopedia Britannica*, Ninth Edition, Vol. XIX, p. 754.

⁶³ Webb, *op. cit.*, pp. 191-201.

⁶⁴ Ruggles-Brise, *op. cit.*, p. 36.

⁶⁵ Hobhouse and Brockway, *op. cit.*, p. 214; Ruggles-Brise, *op. cit.*, p. 247.

⁶⁶ Ruggles-Brise, *op. cit.*, p. 37.

⁶⁷ *Ibid.*, p. 42; Webb, *op. cit.*, p. 225.

⁶⁸ Ruggles-Brise, *op. cit.*, pp. 29-40.

were sentenced for eight years or more and who had already served five years, and the aged convicts division for men who were old and therefore physically feeble and not dangerous and who had little prospect of surviving the sentence in confinement. These were subject, as far as possible and in accordance with their conduct, to only slight severity.⁶⁹

In 1898 the final step in the *unification* of the prison system was taken. Previous to this time there had been a national board for the control of local prisons and a board having charge of convict prisons. *This act merged these two boards into one.*⁷⁰ This act also gave the Home Secretary power to make rules for the government of prisons but subject to the approval of Parliament. This was due to the feeling that too much power had been lodged in the hands of the prison commission and the Home Secretary.⁷¹ The act also provided for an *unofficial board of visitors for convict prisons*, similar to the visiting committees for local prisons. Up to this time corporal punishment of prisoners, it was felt, had been inflicted after secret trial without careful supervision. The act provided that *corporal punishment could be ordered only by these visiting committees* and by the home office and confirmed by the Secretary of State. Furthermore, corporal punishment was restricted to cases of personal violence to a prison official and cases of mutiny.⁷² The act also *abolished the treadmill and crank* as methods of prison labor,⁷³ and established *reduction of sentence* by good marks to all intermediaries sentenced to more than one month.⁷⁴ Much complaint had been offered about the dietaries of the prisons. This act *made these dietaries more adequate*, with the result of a drop in the tuberculosis rate of men in separate confinement.⁷⁵ Finally it *provided for economic production* in the prisons by the labor of the inmates in association. Hitherto, after the public works had been completed, either the treadmill or crank had been used, or prisoners were engaged in poorly productive labor in their cells.⁷⁶

In 1907 Parliament passed the *Probation Act*, a very important piece of legislation, which enabled a court, instead of pronouncing sentence upon the convicted prisoner, to release him on probation, whenever his age, health, mental condition, antecedents, or character, the triviality of his offense, or extenuating circumstances made such a course seem desirable to the court. During the period of probation he was to be under the supervision of a probation officer.⁷⁷

The next year, 1908, the *Prevention of Crimes Act* instituted an entirely new system of reformatory treatment for some of the more serious

⁶⁹ *Ibid.*, p. 41.

⁷⁰ Webb, *op. cit.*, p. 225; Ruggles-Brise, *op. cit.*, p. 46.

⁷¹ Ruggles-Brise, *op. cit.*, p. 46; Webb, *op. cit.*, p. 225.

⁷² Ruggles-Brise, *op. cit.*, p. 227; Webb, *op. cit.*, p. 225.

⁷³ Webb, *op. cit.*, p. 225.

⁷⁴ *Ibid.*, p. 225.

⁷⁵ *Ibid.*, pp. 225-226.

⁷⁶ *Ibid.*, p. 226.

⁷⁷ *Ibid.*, p. 228.

offenders among what the British call "juvenile adult criminals." This gave rise to the *Borstal institutions*, corresponding somewhat closely to the reformatories in this country. This provision relieved the common jails of a large number of criminals for whom they were unsuited. Furthermore, this act put into operation a new principle. The judge was empowered to add to any sentence of penal servitude of not less than three years a further term not exceeding ten years, of what was called *preventive detention*. The purpose of this provision was to keep in confinement hardened professional criminals who had been discovered to be such and who were not deterred by prolonged imprisonment or penal servitude. This act was a substitute for an indeterminate sentence bill that had been introduced in 1903 and failed of passage. To carry out this provision, a special prison at Camp Hill in the Isle of Wight was set apart in which this supplementary detention was to be spent under pleasant surroundings and with the minimum of prison discipline.⁷⁸

In 1913 came the *Mental Deficiency Act*, one purpose of which was to put into special institutions persons of both sexes who had been committed to prison for crime but whose criminality was the result of mental deficiency.⁷⁹ Finally, in 1914, the *Criminal Justice Administration Act* was passed. This provided for the instalment payment of fines and permitted the court to place offenders between sixteen and twenty-one on probation until the sum was paid. The purpose was to save from a prison sentence the enormous number of persons who were committed to the prisons in Britain in default of payment of fines.⁸⁰

QUESTIONS AND EXERCISES

1. How old is the prison as a place of punishment?
2. What three facts account for the rise of the prison system in England? Account for its origin in the United States.
3. What are the outstanding differences between the Auburn and Pennsylvania prison systems?
4. Why was the Pennsylvania system followed in Europe and the Auburn in the United States?
5. What is meant by the new devices known as "good time" and "rewards for good conduct," which were invented in American prisons before 1845?
6. What were some of the more significant experiments in early American prisons?
7. Outline the main points in the development of the prison system in England.
8. What was the significance of the Act of 1877?
9. What was the "progressive stage" system? Describe the steps in its development.
10. When were the treadmill and crank abolished in English prisons?

⁷⁸ For a detailed discussion of the English prison since World War I see Gillin, *op. cit.*, Ch. VIII.

⁷⁹ Webb, *op. cit.*, pp. 228-229.

⁸⁰ *Ibid.*, pp. 229-230.

11. Describe the chief provisions of the Prevention of Crimes Act of 1908.
12. What was the purport of the Mental Deficiency Act of 1913? the Criminal Justice Administration Act of 1914?
13. Outline the chief steps in the development of prisons in the United States since 1845.
14. What difficulties arose in connection with Osborne's Mutual Welfare League? (See Lawes, *20,000 Years in Sing Sing* (New York, 1932), pp. 112-126.)
15. Describe the method of inmate self-government in the Philippines. (See Gillin, *Taming the Criminal* (New York, 1931), Ch. II.)

Chapter XXIV

PRISON LABOR

The problem of labor for prisoners has been a most perplexing one from the very beginning.¹ Even before incarceration was used as a secondary punishment, when men were being thrown into the old jails of England for debt or were there awaiting trial, their enforced idleness was one of the chief causes of the demoralization that impressed John Howard.

We have five different conceptions of the purpose of labor in prisons: (1) the alleviation of the tedium of prison life; (2) repression of crime; (3) the production of economic commodities to decrease the cost of support; (4) reformation; (5) prison discipline.

DEVELOPMENT OF PRISON LABOR POLICIES IN ENGLAND

Since Howard published his studies (1777) of Holland's jails, the requirement of hard work as an essential part of the discipline of a jail had been recognized in theory. By the opening of the nineteenth century, however, by the ordinary legislator hard prison labor was looked upon as a deterrent and as a method to lighten the taxes for prison maintenance. About 1805 in a number of the local prisons in England the female prisoners knit stockings, made twine for fishing nets, and wove hempen cloth. Various handicrafts were carried on in the reformed jails, some of which became regular houses of industry, earning a profit for the institution. The men worked in tailor shops making clothing, the women in the laundry, in sewing rooms, and in other industries.²

In these early English prisons the chief motives for prison labor were support of the institution and discipline. Some of those interested in the reformation of the prisoners found in prison labor a solution of the problem. By 1821 it had become apparent to some of the administrators that the motive of profit for the support of the institution did not fit in well with the purposes of discipline and of reformation.³

¹ For a good discussion of the whole subject see Robinson, *Should Prisoners Work?* (Philadelphia, 1931).

² Webb, *English Prisons under Local Government* (London, 1922); Rusche and Kirchheimer, *Punishment and Social Structure* (New York, 1939) have called attention, but with overemphasis, to the economic motive in prison labor.

³ Webb, *op. cit.*, p. 85.

The burden entailed upon the executive of these jails by the manufacture of goods for profit became so heavy that by 1792 it was urged that the business end should be turned over to contractors. Under the contract system in these English local prisons discipline was destroyed. "The 'farmer,' having no interest in rescuing the prisoners from idleness or reforming them by regularity, only provided work as and when it was profitable to himself. The jailer, who was also a speculator in labor, combined men, women and children in associated employment, irrespective of their mutual contamination."⁴ Prisoners who were good artisans and who could therefore earn the most money or were useful in training others became the jailer's favorites for privileges no matter what crimes they had committed. On the other hand, the poor workers who were of no economic value to the jailer were recommended for remission of sentences or employed merely as wardsmen and cooks. Furthermore, in the course of time, since steady employment was found for the prisoners and free laborers outside often had difficulty in finding employment, and since the prisoners were provided with the necessities of life—clothing, food, shelter, and so on—while the free laborer often suffered from the lack of these necessities no matter how industriously he worked, it was claimed that labor in these prisons no longer deterred from crime. Moreover, employers outside began to object to the competition of the prisons.⁵

As a result of these objections to the use of prisoners in profitable employments, the English jailers by 1826 had turned to the *treadwheel* as a means of conforming to the law of 1824 requiring hard labor.⁶ The treadwheel was invented about 1818 by William Cubbitt for use in the Suffolk County Gaol at Bury. It was sometimes used for grinding corn, and the labor of the prisoners was contracted out to millers. More frequently, however, it was used for no productive purpose.⁷ The cheapness and simplicity of this device caused it to be widely copied in the prisons of England when the Industrial Revolution had made hand work unprofitable and when outside manufacturers began to object to the competition of prison-made goods. Moreover, as a deterrent the treadwheel and similar devices were supposed to be more efficacious than productive labor. All the prisoners hated it, and according to the ideas of that time that was a good reason for having it.

In England there seems to have been no difference of opinion upon the desirability of this form of labor, the only discussion being devoted to the number of revolutions to which the prisoners should be subjected. Some of the magistrates kept their prisoners treading from morning till night, while others used the treadwheel only for what they considered wholesome exercise for three or four hours a day.⁸ Some observers be-

⁴ *Ibid.*, p. 86.

⁵ *Ibid.*, pp. 87, 88.

⁶ The Penitentiary Act of 1779 and the Act of 1824.

⁷ Webb, *op. cit.*, pp. 96 ff.

⁸ Clay, *The Prison Chaplain, 1861*, p. 98.

lieved that the treadmill was injurious to the prisoners' health; others denounced it as impotent to effect any reformation of the prisoners; while still others believed it had no injurious effect. After a generation of trial, however, it was given up as a cruel device for women. While it furnished an easy means of providing labor as a penal measure, the weight of evidence is that it was very injurious to women and occasionally to men. Moreover, it was personally degrading and had no value as a means of training for vocation or of reformation. The difficulty in the whole problem of penal labor in England as well as in this country was to find a reconciliation between prison labor as a deterrent and as a means of reformation.⁹

In 1846 a new device called *the crank* was invented by a man by the name of Gibbs, of the Pentonville prison. This was a device consisting of a crank attached to a narrow iron drum placed on legs. In the interior of the drum a series of revolving cups scooped up a thick layer of sand at the bottom, carried it to the top and emptied it, to be again caught up by the revolving cups. On this machine a dial plate was fixed, which registered the number of revolutions made. A man working at ordinary speed could turn this machine about 10,000 times in eight hours and twenty minutes. In a later form of the crank, instead of the sand a kind of brake was attached by which the resistance could be graded to each individual's capacity. This instrument was widely used in the period when task work was the method of prison labor.

In 1849 Charles Pearson, in a convention of prison reformers in London, proposed a *scheme of prison labor that had for its purpose reformation*. He proposed that the sentence of the prisoner, instead of being so many years and months, should be so many hours of labor, reckoning each day as ten hours, and that an hour's work should entitle the prisoner to a halfpenny's worth of food. Something of the same sort of measurement of sentence by labor was proposed at that same time by Alexander Maconochie, who was at that time governor of the Birmingham jail but who previously had been in charge of Norfolk Island. In his case, however, the labor system was tied up with a certain number of marks or credits. This system had actually been used in Australia, was in operation to a degree in Ireland, and was introduced by Maconochie into the Birmingham jail when he was governor. Owing, however, to a prison scandal in his jail, he resigned, and the whole system went by the board.

In 1850 Charles Pearson advocated *agricultural labor* for the prisoners. His arguments in favor of this method of employment were that it was easily learned, provided considerable variation, was beneficial to the health of the prisoners, was economical because of the few appliances necessary, and produced great returns. At the time, however, this sug-

⁹For a good discussion of the early forms of prison labor in the local prisons of England, see Webb, *op. cit.*, pp. 82-100; Mayhew, *The Criminal Prisons of London and Scenes of Prison Life* (London, 1862), *passim*.

gestion bore no fruit, and the treadmill, the crank, and other useless forms of labor were continued.¹⁰

In 1894 and 1895 a committee of inquiry into the principles and practices of the prison commissioners recommended the abolition of the treadmill, the crank, and so far as possible all similar forms of penal labor, and the introduction of productive labor, not as formerly, however, for the sake of profit for the state, but because of its effect on the minds of the prisoners. The Prisons Act of 1898 finally adopted the recommendations of this committee and *abolished the treadmill and crank* from the prisons. It provided work in association after the first month of confinement in a cell.¹¹ At present in England and Wales all prison labor is devoted to producing articles for the government.

PRISON LABOR POLICIES IN EARLY AMERICA

In the early years of the penitentiary system in the United States (1830), De Beaumont and De Tocqueville found that *contractors* had charge of the prison labor in practically all these institutions. They paid the state about half what free labor would cost. The contracts were given for very short periods, a year generally, and there were numerous contracts in each prison, so that competition between contractors would give the prison the best possible bargain.¹² De Beaumont and De Tocqueville felt the possibility of prison labor competing with free labor, but decided that for the United States the danger was remote because here there was such demand for products that free labor could not provide a sufficiency. Their discussion was not fundamental, and it did not cover the objections that have since appeared to contract labor in prisons.¹³

De Beaumont and De Tocqueville found in America none of those machines like the treadmill and crank used in England on which the prisoner worked in order not to be idle. They say, "Labour is not only salutary because it is the opposite of idleness; but it is also contemplated that the convict, while he is at work, shall learn a business which may support him when he leaves the prison. The prisoners therefore are taught useful trades only; and among these, care is taken to choose such as are the most profitable, and the produce of which finds the easiest sale."¹⁴ Would that we had continued that same policy! What they found was based upon laws that were passed very early in the history of this country.

In 1796 the legislature in New York provided that the Newgate prison could engage in the manufacture of goods to be sold on the open market.

¹⁰ Webb, *op. cit.*, pp. 156, 157.

¹¹ *Ibid.*, pp. 155, 157, 207, 222, 225.

¹² De Beaumont and De Tocqueville, *The Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), p. 81.

¹³ *Ibid.*, pp. 34, 35.

¹⁴ Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, N. Y., 1922), p. 34.

In 1819 a law was passed authorizing the prison authorities to employ convicts upon the roads, streets, and other public works in that city and in the counties of Richmond and Kings. In 1820 the purchase of marble quarries to be worked by convict labor was authorized. In 1817 the legislature had passed a law permitting the employment of prisoners on state canals and providing for the manufacture of goods for others than the state on what is known as the piece-price basis. In 1821 contract labor in the prisons was authorized by the legislature.¹⁵

As early as 1828 the Auburn prison, under Warden Powers and his successors, showed the financial possibilities of that system of prison management. In that year the institution had come within \$1,000 of making its total expenses, and Warden Powers in his report recorded his belief that no further appropriation would ever be necessary for the support of the prison. But the law also provided that these goods should be marked "State Prison."

Nearly a quarter century earlier labor had shown its objection to prison competition. In 1804 a law was passed providing that not more than one-eighth of the convicts should be engaged in making boots and shoes, exclusive of men and women who had learned the trade before entering prison.¹⁶ Thus already the opposition to prison-made goods was beginning to be felt. During the 1830's and early 1840's more serious objections from the economic standpoint began to appear in New York State but with little effect at that time upon the practice. The Mechanics, however, who were the forerunners of organized labor, objected on the ground that convict labor lowered prices, created an oversupply in some industries, established unfair competition, and crowded out free labor into other occupations. At that time attention was also called to the fact that the contractors enjoyed unusual opportunities for profits under the contract system. It was further urged that convicts were taught trades to the prejudice of the free mechanics by developing apprentices out of the criminal classes.¹⁷ In response to this opposition of the Mechanics the New York Assembly in 1841 appointed a committee to consider the matter. The Committee reported adversely on the petition of the Mechanics. But the next year Weir, an assemblyman who the year before had introduced a bill seeking to embody the contentions of the Mechanics, was appointed chairman of the Assembly's committee on state prisons. The report of this committee seriously arraigned the contract labor system in the New York prisons and the "silent system" and urged that the prison was a place for punishment and should be supported not by competing with honest mechanics but by a general tax. It had, however, no constructive suggestions for the substitution of other methods for contract labor in the prisons.

¹⁵ *Ibid.*, pp. 104-106, and Ch. 12.

¹⁶ *Ibid.*, p. 48.

¹⁷ *Ibid.*, p. 332.

This report, however, did point out for the first time two important matters:

1. While disparaging a prison as a reformatory agency, it suggested that the chief field of reformation lay in the social conditions out of which the criminal came. It urged better living conditions, a square deal for labor, and steady employment.
2. It suggested that the inmates produce to the largest extent possible the articles that they themselves could consume or that could be consumed by the inmates of the State Lunatic Asylum. This is the first suggestion of what has come to be called the State Use System.¹⁸

The problem of prison labor in the prisons built upon the cellular plan of the Eastern Penitentiary of Pennsylvania was quite a different one. Since each prisoner was to spend his entire sentence in his cell, labor had to be of such a nature that he could do it in his cell. This did very well so long as machine-made goods did not compete with the products of the prison. With the coming of the Industrial Revolution, however, a new situation was created. Therefore the problem of prison labor in the early prisons of the United States arose only in those built on the Auburn plan. In England, where the cellular system was adhered to for a long time, the problem, of course, was quite different.

From the first protest against prison-made goods in New York State the objection of organized labor has been continued up to the present time. To this opposition has been added that of the free manufacturers.

PRESENT SYSTEM OF PRISON LABOR IN THE UNITED STATES

As the result of the historical development just traced there developed in the United States six systems of employing prisoners, namely, contract, lease, piece-price, state use, public works, and public account. A seventh, the states' use system, has been suggested, but has not been used to any extent.¹⁹

1. The Lease System. The evidence at present available indicates that the lease system in the Southern states grew out of the War Between the States.²⁰

Under this system the state gave up all control of the prisoners and put them into the hands of the lessee. The state was relieved of all expense in connection with them: it had to build no prisons; it needed to hire no guards. Immediately upon conviction the prisoners were sent to the camp of the lessee, where they were put to work. From the stand-

¹⁸ *Ibid.*, pp. 144-145.

¹⁹ The "states' use system" is discussed in the next chapter rather than here.

²⁰ McKelway, "Three Prison Systems of the Southern States of America," in Henderson, *Penal and Reformatory Institutions* (New York, 1910), p. 71. Industry in some of the prisons of this country and of England was leased or contracted to private parties as early as 1709, but that is not the lease system as it developed in the South.

point of the state it was, therefore, the most economical system in use.²¹

As a system of penal treatment, however, the lease system had nothing to be said for it. It was a system of slave labor, pure and simple. The state dismissed these convicts from its care and put them practically at the mercy of the lessees. The system has been condemned universally on the basis of its inhumanity. Brutal foremen often had charge of the camps in which these men were kept, out of sight of other people and entirely at the mercy of the lessee's agents. Shocking stories of cruelty and neglect characterized the history of this system. For a long time the chief complaints of the evils of the lease system came from Florida. Most of the convicts were Negroes and were worked in turpentine and lumber camps. Bloodhounds were kept in some of these camps to trail escaping inmates; the convicts were worked in swamps where they were wet all day long; the bunk rooms were long, low compartments filled with iron beds supporting filthy mattresses; they worked barefooted, with the consequence that their feet swelled; and because of the dampness in which they worked many of them contracted rheumatism and some died of pneumonia. On January 1, 1912, of 1,421 state prisoners in Florida, 516 had been committed the previous year. The state got \$400 for each man per year. Says a writer in describing one of these camps: "Seven convicts died in this camp in a single year from diseases contracted from standing or working in water up to their waists at all seasons of the year." Prisoners were forced to work even when sick, and the punishment of prisoners who either were unable or refused to work was entirely in the hands of the company leasing the prisoners. The captain of one of these camps told a visitor that he was on the point of shooting a Negro who had refused to work but changed his mind and knocked him down three times with the butt of his revolver. Whatever hospital facilities were provided were paid for by the lessees. The idea at the bottom of this system was profit rather than reformation.²² A report on prison labor in 1936 stated that the system of leasing prisoners "seems to have entirely disappeared from both state and federal prisons."²³

2. **The Contract System.** The contract system was early adopted in the United States. When De Beaumont and De Tocqueville visited this country, they found the contract system in operation in many of the jails.²⁴ Under this system the state furnishes the buildings, provides power and light, and guards the prisoners. The contractor furnishes the machines and the material upon which the prisoners work and supervises the work.

In such a system you have a divided authority over the prisoners at

²¹ *Annals of the American Academy of Political and Social Science*, Vol. XLVI, March, 1913, p. 12.

²² Goodnow, "Turpentine—Impressions of the Convict Camps of Florida," *The Survey*, May 1, 1915, pp. 103-108.

²³ Sanford, "Prison Labor in 1936," *Monthly Labor Review*, Vol. 47, Aug., 1938, p. 251.

²⁴ De Beaumont and De Tocqueville. *op. cit.*, pp. 34, 35.

work. The prison guards keep order, and in case the prisoner refuses to work or gets into difficulty with the contractor's foreman or does not do his stint, he is reported to the guard for discipline. The contractor's foreman has entire charge of the industrial activities of the prisoners, passes upon the quality of the work, and directs the prisoner as to what he shall do. Unless the guard and the foreman work together, there is bound to be trouble.

Under this system the state is paid a fixed sum for the daily work of the prisoner. The contractor disposes of the goods on the open market in competition with free labor. Inasmuch as the contractor hires prison labor at reduced wages, he has an economic advantage. It is this condition that has aroused most of the opposition to this system, for the prison-made goods come into competition with the products of employers who employ free labor. Under the Hawes-Cooper Act this form of prison labor has largely disappeared.

3. The Piece-Price System. Under the piece-price system we have a situation somewhat different from that under the contract labor system. In the latter the contractor furnishes the machines and the material and has some responsibility over the supervision of the prisoners. In the piece-price system the state officials have entire charge of the prisoners. They set the speed, determine the quality of the work, and have entire charge of the productive process. They maintain the institution and feed, clothe, and guard the prisoners. The contractor furnishes the material and pays the state an agreed amount for the work done on each finished article accepted by it. Under this system one of the evils of the contract system is done away with, namely, interference of other than prison officials. The competition of the products, however, with free labor on the outside is no less severe than under the contract system. It is subject to the same objections, therefore, from manufacturers and union labor.

4. The State Use System. The state use system is one in which the state carries on manufacturing processes but the products are not sold in the open market. They are manufactured for the use of other state institutions and sometimes for county and city institutions.

This system obviates the objections of free labor and of manufacturers on the outside on the ground that the goods are not put into competition on the open market with the products of non-prison factories. Essentially, however, this system does not do away with competition with outside industries, for whatever products are made in prisons cannot be made by free labor. Both labor-unions and manufacturers have now come to see that. Although labor-unions and manufacturers were instrumental in urging legislation substituting the state use system for all the others, recently they have joined in objecting to even that system. They see that prison-made goods when sold to the state and its political subdivisions do compete with goods made by free labor. This subject will be discussed at length in the next chapter.

Most states with this system do not have a compulsory purchase clause in the laws. Others which have such a clause do not enforce it. It has worked fairly well only in Massachusetts and New Jersey. As a consequence of these difficulties the states using this system have the largest proportion of idle prisoners.

5. Public Works and Ways. The system known as public works and ways is quite like the state use system. According to this plan the labor of the prisoners is not used in the manufacture of articles of merchandise but for the construction and repair of the prison or other public buildings, roads, parks, breakwaters, or other permanent public structures.

This system, used early in the the Walnut Street Jail in this country and in the hulks in England, was most extensively employed in the South. There the so-called "chain-gangs," county and state, built and maintained the roads. In a few states public buildings and other public works are constructed by prisoners.

This system competes with contractors employing free labor but has not encountered bitter opposition in the South, where labor is not well organized. In the North the road contractors object to its authorization by the legislature. Also the state is loath to provide the funds necessary to buy the equipment necessary to carry on modern road and building construction. Colorado from 1908 to 1928 carried on a road-building program very successfully, and to-day California has such a program in full swing with selected men from San Quentin.²⁸

The farms and conservation camps established in connection with many prisons in the United States, in Germany, and in Russia may be classified here, although the products of the farms are for state use. These have proved to be economical and healthful outlets for prison labor.

6. Public Account System. The public account system is one of frank production for the market. The prison is really a factory, as it is under the contract and the piece-price systems, but under the public account system it becomes also a marketing agency. The institution not only furnishes the buildings, power, and light and feeds and guards the prisoners, but it conducts the entire business from the buying of the raw material and equipment of the factory to the selling of the finished product in the market. Whatever profits or losses are entailed are the state's.

This system has been in operation in some prisons from the very beginning of the prison system in this country. In recent years it has had a new expansion in some of our prisons. For example, in Minnesota and

²⁸ For a detailed account of this experiment in the various states of the United States see "Good Roads and Convict Labor," *Proceedings of the Academy of Political Science in the City of New York*, Vol. IV, Jan., 1914; *Convict Labor for Road Work*, Bulletin No. 414, United States Department of Agriculture (Washington, D. C., 1916); Tynan, "Prison Labor on Public Roads," *Annals of the American Academy of Political and Social Science*, Vol. XLVI, Mar., 1913, p. 58; Pratt, "Convict Labor in Highway Construction," *ibid.*, p. 78; Asher, "County Road Camps in Arkansas," *ibid.*, p. 88; Bryant, "Outdoor Work in Michigan," *ibid.*, p. 90; Cooley, "Good Opportunities for Prison Labor," *ibid.*, p. 92; Marker, "Experimental Road Work in Ohio," *ibid.*, p. 99.

and also Belgium, France, Germany, and Italy gave first consideration to the state-use system of prison labor. Canada and New Zealand employed no other system.²⁹ In the others some contracts were permitted and public works and ways employed some of the prisoners. In *Australia* the lease system was gone, while the piece-price and contract systems were dying out. In *Belgium* in addition to the state-use system the contract system was allowed. Thirty-five per cent of the prisoners in 1925 were employed under the state-use system. In *England*, while goods made in the prisons may be sold on the market, practically all prisoners were engaged in making articles for the government, mostly mail bags and articles needed for the army and navy.³⁰ In *France* while most of the work was under the state-use system, some work was done by the prisoners for contractors on the piece-price system. On the whole, however, prison labor in the French prisons, when I visited a number of them in 1928, was carried on in the individual cells largely by hand and was quite unproductive. In *Germany*, the attempt was made to employ as many as possible in making goods for the state. The Department of Commerce in its report in 1929, however, points out that state use in the Berlin and Brandenburg prisons occupied less than half of the prisoners productively employed. There were 3,300 prisoners working for 200 private contractors.³¹ However, in some of the German states when I visited the prisons there in 1932, I found an attempt to extend the farm work and the truck gardens and to carry on productive and instructive work on diversified industries as much as possible for the state and the municipalities; but there was also contract work in order to keep the men occupied. I was impressed by the fact that there was very little idleness in the German prisons. In *Italy* in addition to contract work some of the prisons were leased to private parties but with rigid regulation of the conditions under which the work was done.³² Italy after World War I developed some farm colonies of outstanding merit. Likewise in *Japan* in 1928 while prisoners were employed primarily on products for the government, contracts could be let with the consent of the Minister of Justice. Farm work, construction, and other forms of the public works and ways system were in operation.³³ In the *Philippines* in 1928 there were no idle prisoners. Bilibid was a great industrial prison. No contracts existed, but production of goods for sale on the market existed on an unprecedented scale. The production of furniture was the largest single industry. The raw material was cut and prepared for finishing at the penal colony at Iwahig on the Island of Palawan. The finished

²⁹ *Prison Industries*, Department of Commerce Series, No. 27 (Washington, D. C., 1929), pp. 19, 20.

³⁰ *Ibid.*, p. 80; and Gillin, *Taming the Criminal* (New York, 1931), p. 252; "Prison Industries in England," *Monthly Labor Review*, Feb., 1939, pp. 351, 352.

³¹ *Prison Industries*, pp. 82, 83.

³² *Ibid.*, pp. 83-85.

³³ Gillin, *op. cit.*, pp. 14-16.

product was made at Bilibid. In addition a large agricultural program was in operation at the San Ramon prison and farm colony on Mindanao and at Iwahig. Much of the products was used in the prisons and by the state, but the surplus was sold on the open market.⁸⁴ In Ceylon in 1928 there existed state-use and public account systems. In addition to articles for use in the government departments all sorts of needed articles were made for the state railways. Laundering for the government departments, the hospitals, the asylums for the insane, the railways, and the police was done at the Welikada prison. The weaving of all the sheets, towels, handkerchiefs, and cloth for clothing manufactured for the inmates of government institutions and on public account was done in two of the prisons.⁸⁵

So far as *employment of prisoners outside of prison walls* is concerned, the most significant operations were to be found in Germany, before the Hitler régime, in connection with the prison systems in Hamburg, one or two places in Prussia, and Bernau in Bavaria; at Merxplas, Belgium (for young adult offenders); in Russia; at Witzwil, Switzerland; in the Philippines; in India (for the Criminal Tribes); in Italy; in our Southern states; at Guelph, Canada; and to an increasing extent in prison camps and farms in some of our Northern states.

QUESTIONS AND EXERCISES

1. What five different purposes of prison labor have been advanced?
2. What are the purposes back of the treadwheel, crank, and other non-productive forms of prison labor?
3. Evaluate the theory that "prison labor must be distasteful in order to deter men from committing crime in order to get into prison."
4. What purposes do you think should inspire policies of prison labor?
5. Outline a system or systems of prison labor adapted to such prison populations as we have in most of our prisons—poorly educated, most of them without a trade, a certain percentage of them mentally abnormal, and most of them sentenced for not more than two years.
6. Is opposition to prison labor sound on the basis that it competes with free labor?
7. If the competition with free labor is "unfair," in the sense that prison-made goods are produced at less cost and can therefore undersell goods made with free labor, should it be permitted?

⁸⁴ *Ibid.*, Ch. II.

⁸⁵ *Ibid.*, pp. 75-81.

Chapter XXV

SOME UNSETTLED PRISON LABOR PROBLEMS

In spite of more than a century of experience with prison labor, the subject bristles with unsettled problems. This experience has settled some questions; it has suggested solutions for others, while still other problems remain apparently without any hint of a solution.

In the class of problems that have been settled are:

1. In the interests of economy, the welfare of the prisoners, and prison discipline, the prisoner must be kept busy at useful labor.
2. To carry out these objects, prison labor must be not in solitude but in association.
3. The incentive to labor must not be the whip but positive inducements.
4. Contract labor has almost disappeared from prisons in this country.

Among the questions that the experience of the last century has helped to bring nearer to solution are:

1. Positive inducements such as privileges, reduction of sentence, and wages increase economic production.
2. A proper labor system contributes to the improvement of prison discipline and the health of the prisoner.
3. Prisoners must be classified according to their ability to do a certain amount of work and their adaptability to different kinds of work if the utmost production possible is to be secured from them, and if the labor is to prepare prisoners for an honorable career on discharge.
4. Outdoor work on farms, roads, and other improvements of land is suggested because of the adaptation of this kind of work to the low capacities of certain prisoners and because of the better health of those who work outside prison walls.

Among the problems that are not yet settled and for the settlement of which we must wait on further experience are:

1. Determination of the best system of prison labor, taking into account all the purposes of such labor.
2. The unproductiveness of prison labor. While under the contract system prison labor can be nearly as efficient as free labor, so far under the management of the prison authorities most kinds of prison labor are inefficient.
3. The relation of prison industries to free industries. Both the manufacturers and the workers outside oppose a prison industry policy that leads to ruinous price-competition.
4. The problem of the reconciling productivity with the reformatory purposes of the correctional institution.
5. The problem of the payment of a wage to prisoners.

Let us look more closely at some of these unsettled problems and at some possible explanations of their difficulty. In order to approach these problems intelligently we should consider two things: (1) the place of prison labor in the total social configuration, and (2) the functions of prison labor.

Prison Labor and the Social Configuration. The problem of prison labor is not a unitary problem. It is one of the many ramifications of our socio-economic order, and therefore the problem is insoluble in isolation. Let us first clarify the picture. In the United States in 1940 there were 191,776 in penal and correctional institutions. Of these 83,515 were "productively" employed. The amount of idleness might be lessened if the number assigned to county camps in the southern regions is considered. The bulk of the employed convicts are engaged in maintenance jobs, and not in productive labor. The unemployed are largely of the unskilled laborer group, a group not prepared for successful use of leisure time in isolation. The prisoner must spend many waking hours in his bunk or else he must pass the time in milling about a "recreation" hall or yard.¹

The prisoners are, for the most part, unclassified except as to sex and advanced stages of mental and physical illness. Accordingly, the new offender and recidivist, the senile and the youthful, the neurotic and the normal, the homosexual, the drug addict, and so on, are, except in a few institutions, which are mostly federal, indiscriminately mixed. This heterogeneous prison population induces new problems and is an important element to be reckoned with in regard to the goals sought by means of prison labor.

The historic attitudes of society toward the treatment of criminals makes the solution of the prison labor problem difficult. Our traditions are that the criminal is a perverse kind of being, that he must be punished in order to prevent his repeating his crime and to deter others from similar acts, that he does not like to work and hence labor is punishment, and that the prison should pay a large part of the cost of the maintenance of the prisoners. Only recently has the rehabilitation of the prisoner begun to be accepted as a motive in the program of treatment. The old, established traditions persist in the mind of the public. These cannot be changed in a day. Some of them serve the selfish purposes of those—laborers and manufacturers—who are not concerned primarily with the welfare of society, especially when that welfare conflicts with their profits. The welfare ideal and the profit motive do not always run parallel. In a society in which the profit motive is dominant, the welfare of society has to take a subordinate place. These factors in the social configuration

¹ Bennett, "Horse Collars and Prisons," *Survey*, Vol. 73, Sept., 1937, p. 279. See also *Attorney General's Survey of Release Procedures*, Vol. V, *Prisons*, (Washington, D. C., 1939), pp. 50-54 and Ch. 9; *Prison Labor in the United States: 1940* (Washington, D. C., 1941), p. 1. The number cited above includes those in camps.

of our society must be kept in mind if any practical solutions of these problems are to be devised.

The Functions of Prison Labor. Sociology, as a non-normative science, cannot question the desirability of the ends. It *can*, however, investigate the relation of the means adopted to the ends sought. It can, on the basis of certain sociological and socio-psychological principles, seek to support or challenge the logic of the means-ends scheme. It is this procedure that will be followed here. Prison labor successfully fills its rôle to the extent that it attains prescribed ends. Investigation of the current situation reveals that the demands are many and varied and emanate from different sources. Thus it is held that prison labor should be: (1) the prime factor in alleviating the problem of prison discipline; (2) the principal means of making the prison self-supporting; (3) a just means of punishment; (4) the protector and preserver of mental and physical health; (5) the means of training unskilled laborers; and (6) a form of labor that will not compete with private industry, that is, with "honest" labor.

Immediately one is impressed with the generic fact that these ends are incongruent and probably never can be made otherwise. Here is emphasized the truth long recognized by the sociologist, namely, that one cannot discuss the problem of prison labor, or any social problem, by tearing it from the social complex of which it is a part.

Let us, then, examine, the demands made on prison labor as it operates under the prison system described above. To what extent are these demands being met? Are the means and ends logically appointed? Consider them in the order listed above.

(1) *As an Aid to Prison Discipline:* Few will challenge the statement that men whose day is largely occupied by some form of labor, unless too harsh, are less apt to cause disciplinary problems than those whose time is spent in idleness. The form, as well as the amount, of labor provided is significant here. The old-time "treadwheel" type of labor is hardly conducive to well-behaved inmates. However, with half of the prisoners of the United States idle, it is obvious that labor has not been sufficiently exploited as a disciplinary measure.

It is well to keep in mind that labor as an aid to discipline is an end in itself in the minds of a few, primarily those in immediate charge of the prison. Desirable as it is in the rôle, it is only an incidental end in broader schemes.

(2) *As the Principal Means of Making the Prison Self-Supporting.* There is no antagonism between this aim and (1). Fulfilment of one is conducive to the realization of the other. The idleness that thwarts the attainment of one also operates to defeat the other. The perplexity due to the economic inefficiency of most prisons has been well expressed in the following statement:²

² Smith, "Efficiency in Reform and Prison Administration," *Journal of Criminal Law and Criminology*, Vol. XI, Feb., 1921, p. 587.

If 75,000 men, mostly unskilled, but the majority of them able at all times to do good work, were at your disposal and you had absolute control over their employment and proceeds thereof, your only outlay being to supply them with ample food, clothing, and shelter, and see that they had the humane care and consideration to which all laboring people are entitled—if you were in this position and all the income over and above what it took to maintain these men were your own, you would think yourself an exceedingly poor business man if within a very few years you are not independently wealthy, would you not? If, in addition to these men's labor, you also had given to you gratis the use of 135,000 acres of land worth \$30,000,000; buildings, industrial and non-industrial valued at \$65,000,000 and \$4,000,000 worth of machinery and tools, the only condition to the gift being that you use the land, building, machinery, and tools in the judicious employment of your 75,000 men, you would think that within 25 years few men, indeed, would be able to boast a larger fortune than you, would you not? And yet, with some more or less material qualifications, such has been the situation of the penal institutions in the United States for more than 30 years, and, far from being a source of profit, they have been sinking money for the federal and state governments at the rate of from \$7,500,000 to \$10,000,000 a year.

But, as shown above, only about 44 per cent of the prisoners in the sample studied in 1940 were employed at productive labor. Also about a third of those employed are engaged in maintenance duties in the prison.

Consider also that the prisons have among their inmates a large proportion incapable of contributing very much to a productive industrial activity—the inmates inferior physically and mentally, those without industrial skills. Add to these conditions the frequently inferior mechanical equipment and the limited market imposed by law enacted at the behest of those who think they are injured by the competition of prison-made goods. Under such conditions how can a prison be made to pay?

May not this inefficiency be explained in part by the *character of the inmates*?

Says a prison survey report:³

A large section of the prison population consists of custodial rather than punitive cases. The prisoner who is mentally or physically unable to cope with the conditions of a free society should not be allowed to complete the cycle of commitment, release, and recommitment, and indulge between times in a criminal career as the only means within his knowledge of obtaining a livelihood. . . . It is believed that before any great advance can be made in the training of prisoners the mental deficients must be sorted out, segregated, and dealt with as a separate unit. Elementary, advanced, and industrial education, wage incentives, self-government, and parole measures will be of little avail with this class of prisoners, whose mental limitations prevent them from taking advantage of any privilege or opportunity.

However, the efficient use made of the inmates of the Rome, N. Y., institution for the feeble-minded indicates that many of the mentally deficient persons can be productive.

³ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1930), p. 104.

May inefficiency not also be due to the *methods of discipline and management* used in the prison? "Smoky," in San Quentin Prison, expressed this point of view as follows:⁴

What I can't get through my nut is why two thousand able-bodied men cost the State \$100 a year apiece. If we had a little town of our own outside we'd have our families and children, an' good food an' decent clothes, an' theatres an' fire department and everything else, an' we'd all be comfortable, an' some of us would have money in th' bank, an' we'd send our kids to school, an' all that. By workin' ev'ry day we'd support five 'r six thousand people besides ourselves, an' yet in here, livin' like dogs in kennels, an' eatin' th' cheapest grub they can get, it costs th' State a quarter of a million dollars a year t' keep us. There's somethin' rotten somewhere. If they'll let us guys work an' pay us fr it, an' make us pay fr what we got, y'r'd see a big difference. Y'r wouldn't see men comin' back, an' y'r'd see lots of 'em go out an' take their proper place in th' world. They'd have th' work habit then, because they'd know that work brings a man all that makes life worth while.

But on the outside there would be no legal limitations on the market of the goods produced. Smoky forgot that!

(3) *Repression of Crime*. Our statute books still contain laws prescribing imprisonment and "hard labor" for offenders. But how can imprisonment be said to aid the repression of crime when it is impossible to find work for any large proportion of the inmates? The logic of recent movements to limit the output of prison industries has destroyed prison labor as a means of repressing crime. Moreover, in theory labor is unnecessary to deter from crime. The deprivation of liberty is adequate to the purpose of punishment, and prison labor serves different ends. This is true in practice to-day. The prisoners for the most part prefer work to idleness in their cells. In general, it can be said that labor in addition to prison sentence should not be, and is not, employed as means of deterrence. Unless of brutal proportions, it alleviates the hardships attending loss of liberty.⁵

(4) *As the Protector and Preserver of Mental and Physical Health*. It should not be necessary to elaborate on this point. In so far as labor is available, it does, by a wide consensus of opinion, act as the preserver of health, both physical and mental. Psychiatrists, physicians, social-psychologists, wardens, and so on, are in general agreement here, holding it to be essential to a maintenance of balance.

(5) *As a Means of Preparing the Prisoner for Return to Society*. The old problem of how to reconcile economic production with the purpose of rehabilitating the prisoner is still with us. The prison is at the same time a factory and a school. Up to the present time these two functions have not made a very good team. Can they be made to pull together? There seems to be no inherent reason why they cannot. The amount

⁴ Lowrie, *My Life in Prison* (New York, 1912).

⁵ "Prison Labor Conditions in Georgia," *Monthly Labor Review*, Vol. 46, Jan., 1928, p. 164.

of classroom work necessary to train men for useful industry is not great if those in charge of the various economic activities have the educational purpose in mind. Occupations in a prison may have vocational value if the officials in charge keep the training purpose in mind. The answer is in the selection of the prison officials. Good business management and training must go together. However, to reconcile these two purposes certain classifications must be made. The mentally abnormal must be segregated and given special training. The mentally normal can then be trained together along vocational lines suited to their greater capacity to learn and to produce.

The manner in which the prisoner's time is occupied is important in any plan to prepare the individual for eventual life in normal society. If his labor can be made similar to that which he is apt to find after his release, a long step is taken toward his rehabilitation. In many cases, this means training the person in the prison shops and camps.

Another prerequisite to this end is the diversification of the prison industries. Concentration on a few industries, or a single industry or product, defeats the training function. Narrow specialization has the additional shortcoming of competing unduly with a few private industries. This brings us to the next point for discussion in the problem of prison labor.

Competition with Private Industry and "Honest" Labor: Ever since the populace of Nineveh rioted many centuries ago because of the king's return from battle with 208,000 prisoners who competed with "honest citizens," there has been opposition to convict labor.⁶ Rare indeed is the legislature that has not felt the pressure of some person or group interested in curbing or removing this source of economic competition. While in the early period of history in the United States, as we saw in the previous chapter, organized labor was opposed to all prison industries that came in competition with those in which free laborers were employed, more recently free labor's and industry's attacks have been centered on contract labor. It was at the suggestion of union labor that New York State adopted the state-use system in 1894.⁷

Both organized labor and manufacturers without prison contracts agree that contract labor in prisons is bad social policy. It is bad for the manufacturer because it subjects him to *unfair competition* in that goods made under prison contracts can be sold on the market for less than those manufactured by free labor. Labor objects to it because it enables the holder of the prison contract to manufacture goods and sell them at prices that force the manufacturer of the same line of goods, employing free labor, either to reduce wages or to stop production. That is the

⁶ Bennett, *op. cit.*, p. 279.

⁷ Whitin, "The Prisoner: Public Servant," *The Survey*, Oct. 15, 1923, p. 70. The importance of the problem led the United States Commissioner of Labor Statistics to begin an investigation of the amount of competition between prison and non-prison goods as early as 1885. *Monthly Labor Review*, June, 1940.

reason why union labor has been in favor of the state-use system.⁸ To what extent, one may ask, are these persons and groups justified in their complaints?

In the first place, it is true that in any limited market, the producers of goods for that market are competing with each other. Prisons are no exceptions. One must recognize that fact that *any* prison labor competes with, and reduces profit for, non-prison producers.

As indicated above, the competition may be proportionate or not, depending upon the degree to which the industry is diversified. One would readily recognize the legitimacy of the complaint that is registered against the concentration of prisons on one or two industries.

Upon our present economy, the producers strive to erase or reduce competition. This is done (1) by advertising, by salesmanship, by tariff walls, by producing innovations and by securing patents and copyrights on these innovations, by securing monopolies, and so on. A more direct method of reducing competition is (2) by removing from the field of action certain groups of producers; for instance, by inducing boycott, by legislation, by threat of force, and the like. There are several prerequisites to success in this second method: (a) the group must be identifiable; (b) it must be a minority group; and (c) it must be possessed of certain characteristics that place it in a disadvantageous position in the eyes of the policy-making populace. Groups that fulfill these requirements and are therefore vulnerable economically are: (1) nationality and cultural minorities such as the Jews, and the immigrants from southern and eastern Europe; (2) the racial stocks other than the whites, that is, Mongolians and Negroes; and (3) prisoners or other inmates confined in state institutions.

The fact that these are identifiable minorities is sufficient to explain the success of those who seek to reduce their economic efficacy. The significant factor lies in the existence of popular prejudices against them. The exploitation of these prejudices to the economic detriment of these minorities is a common practice. The stronger the prejudice, the less chance the disadvantaged group has of economic survival. The feeling that it is unjust for native Americans to be in an economically precarious position while Orientals, Negroes, Jews, and recent arrivals from southern and eastern Europe are prospering, is paralleled by the charge of "unfair competition of prison labor with honest labor."

How legitimate is this attack upon these minority competing groups? Whether it is bred of economic desperation or of sheer "ambition," the answer must be the same; it hinges upon one's attitude toward these groups.

If the contention that these groups are less "worthy" than the free, native whites is deemed valid, than the practice is defensible on this ground. If it is held that the prisoner could have, of his own accord,

⁸ *Report of the Prison Survey Committee, State of New York*, pp. 87-89.

avoided the deprivation of his liberty and other rights, then the removal of competition by abolishing prison labor can be justified on this basis and challenged only by the warden who seeks to retain it as a means of facilitating discipline.

If, however, one feels that incarceration has as its signal purpose the protection of society (over 90 per cent of the prisoners return to society) and, therefore, the rehabilitation of the inmates, provision of a carefully planned labor program is indispensable. If we feel, as do most social scientists of to-day, that the criminal is the product of his experiences and not of a "will to evil," there can be no defense for withholding from him this valuable means of rehabilitation and training, which may enable him to become a useful and safe member of society. It is important to remember that had the prisoner never run counter to the law, he would be in competition with others as much as he is as a prisoner. He would, however, if not a member of another identifiable minority group, be indistinguishable from thousands of other workers and therefore not open to this type of discrimination.

One must conclude, then, that (1) prison labor will always compete with non-prison labor; (2) it can be adjusted and diversified in order to divide this competition; and (3) it must be maintained (indeed it must be greatly expanded) if it is to be effective as a means of rehabilitating the prisoner and thus preparing for his reëntrance into society. Is one mistaken in thinking that an effective rehabilitation program, in which prison labor is one element, has an important bearing upon the size of the prison population? About half of the inmates are recidivists.

Present-Day Practice. As shown in the table on p. 409, production by the state-use system in 1940 was currently the most common system of employing prison labor. As indicated above, however, it is not particularly efficient.

The difficulty with the state-use system has been that the articles for state use have not been standardized, and it has proved to be difficult to force the counties, cities, and even the states to purchase needed articles from the prisons. Consequently it has not been possible to make use of the market available in a state for the products of the prisons. Even such a populous state as New York found it impossible to get the state agencies, the counties, and the municipalities to order prison-made goods. The authorities sometimes could not get just what they wanted from the prisons and found ways of circumventing the law.⁹

All states are not so populous and therefore may not furnish so good a market for prison-made goods as New York. Moreover, some prisons already have established certain industries different from those in the prisons of other states.

⁹ *Report of the Prison Survey Committee, State of New York*, pp. 86-87. The constitutional amendment was passed in 1894, the first practical attempt to carry it out was in 1895, and state use finally became a settled policy in 1897.

Therefore, to meet that situation, it has been suggested that a number of states in the same general region centralize purchasing and that each state buy from the prison of another state those articles that are not produced in its own prison. This is called the "states'-use system" in contrast to the former "state-use system."¹⁰ The attempt to carry this plan out for a number of states was undertaken by the National Committee on Prison Labor. In April, 1924, occurred the first conference of the Committee on Allocation of Prison Industries, at Salt Lake City. This conference faced the fact that while in 1923 prison industries had produced \$69,985,218 worth of goods, only \$26,522,700 were put to state use. The balance, amounting to \$43,462,518, was sold on the open market.¹¹ The logical thing, therefore, said this conference, was that when the market of any one state was not large enough to absorb the output of its state prison, the Committee on Allocation should endeavor to allocate the prison industries and to interchange surplus production between states so that none of the surplus products of the prison would go upon the general market. The plan was to have certain of the states make one product, just enough to supply the demands of the state institutions in the group, while other states manufactured other products, and to have the surplus of each state exchanged with the other states in the zone.¹² No progress has been made in getting states to cooperate in this scheme. In 1936-1937 seven states specifically prohibited such sales; one prohibits the export of prison-made goods; and one permits the exchange only if such products cannot be made in its own prisons.¹³

This single product plan is not, of course, compatible with any training program, since few could find similar employment once they were released. Minnesota's emphasis upon binding twine is illustrative of this. No school stresses courses regardless of the demand for that training.

If the state is to be kept out of the market in the sale of the products of its prisons, it seems probable that more attention must be given to the business management of the prison industries than has yet been provided. The New York Prison Survey Committee in 1920 recommended that that state under the state-use system undertake to make use of the market that is available to meet the demands of the various state institutions and political subdivisions. The study in which the recommendation was made showed that while there was a possible market amounting to over \$20,000,000 in the state departments and institutions in the cities of New York and Buffalo alone, the state was producing in all its prisons

¹⁰ Whitin, *op. cit.* See also *The Survey*, Oct. 15, 1923, pp. 69-71; Whitin, "Self-supporting Prisons," *Journal of Criminal Law and Criminology*, Aug., 1924, p. 323.

¹¹ The Bureau of Labor Statistics reported that in 1936 the value of prison-produced goods had fallen to 49.9 per cent of the amount in 1923 in the prisons studied. Sanford, "Prison Labor in 1936," *Monthly Labor Review*, Aug. 1938, pp. 251-268.

¹² *Monthly Labor Review*, Vol. IV, Sept., 1924, pp. 204, 205.

¹³ *Attorney General's Survey of Release Procedures*, Vol. V, p. 188.

only a fraction of that amount. Massachusetts has most successfully operated the state-use system.¹⁴

The Hawes-Cooper Act. On January 19, 1929, the Hawes-Cooper bill became a federal law to take effect in 1935. This act was aimed at the elimination of prison-made goods from interstate commerce into those states that forbid the sale of goods made by prisoners under certain conditions. The law provides¹⁵

That all goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal and/or reformatory institutions, except commodities manufactured in Federal penal and correctional institutions for use by the Federal Government, transported into any State or Territory of the United States and remaining therein for use, consumption, sale, or storage shall upon arrival and delivery in such State or Territory be subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such State or Territory, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise.

This act was the result of the efforts of the American Federation of Labor, the Manufacturers' Conference on Prison Industries, the General Federation of Women's Clubs, the National Committee on Prisons and Prison Labor, the United States Chamber of Commerce, and other similar organizations. It is aimed primarily at the contract and piece-price systems but also at the public account system. Already sixteen states had laws requiring that prison goods be labeled as such, and in seventeen states the contract system was illegal.¹⁶ This law has been held constitutional by the Supreme Court and tends to lessen the productivity of the state prisons and reformatories. Its influence is seen in the fact that by June, 1940, thirty-six states had adopted the state-use system, and laws regulating the sale of prison-made goods were in effect in thirty-eight states.¹⁷

Support was given this legislation by the Ashurst-Summers Act of 1935, which made a federal offense the transportation of prison-made goods into a state in violation of its laws.¹⁸ A recent survey disclosed that in twelve states the sale or distribution of prison-made goods on the open market is prohibited altogether; that sixteen states have general prohibitions with certain exemptions; and that eight states, including three of the above, have legislated against the sale or distribution of imported prison-made goods.¹⁹ The effect of such pressure is revealed by an inquiry carried on in eighty-eight state prisons and reformatories in 1936 and

¹⁴ Robinson, *Should Prisoners Work?* (Philadelphia, 1931), p. 102.

¹⁵ *Ibid.*, p. 109.

¹⁶ *Laws relating to Prison Labor in the United States as of July 1, 1933*, Bulletin No. 596, United States Bureau of Labor Statistics (Washington, D. C., 1933); *Monthly Labor Review*, Nov., 1934, pp. 1122-1128.

¹⁷ *Monthly Labor Review*, Vol. L, No. 6 (June, 1940), pp. 1424, 1426.

¹⁸ *Monthly Labor Review*, Vol. XLV, No. 6 (Dec., 1937), p. 1426.

¹⁹ *Ibid.*, p. 1424. The constitutionality of both the Hawes-Cooper Act and the Ashurst-Summers Act has been upheld by the United States Supreme Court.

1937, which showed that prison production dropped in value from \$70,000,000 in 1932 to \$20,000,000 in 1936-1937. In this same period the number of prisoners employed dropped from 70,000 to about 25,000.²⁰

So whether such legislation is desirable or not in the face of the functions of labor in a prison system, this legislation marks the triumph of free labor and industry against the sale of prison-made goods on the general market.

Prison Industries Reorganization Administration. The passage of the Hawes-Cooper Act threw consternation into the ranks of the prison administrators. How were they to keep their inmates busy? Under the NRA the manufacturers attempted to set up codes that would boycott the sale of prison-made goods. The prison administrators countered by setting up a "compact" with the approval of the NRA. This compact agreed to by the prison administrations of thirty-two states set code hours of work for prisoners and agreed to sell the prison products at fair market prices. But some manufacturers and labor organizations still protested violently against the competition of prison-made goods. Congress then in 1935 passed the Ashurst-Summers Act, which was intended to strengthen still further the Hawes-Cooper Act. The cotton goods manufacturers still complained. President Roosevelt then directed the National Recovery Board to make recommendations looking to some method of solving the problem of the competition of prison-made goods with free industry. As a result the President finally, September 25, 1935, by executive order created the Prison Industries Reorganization Administration.

The functions of this organization were: (1) in coöperation with the authorities of the states and their political subdivisions and the District of Columbia, (a) to make studies of the industrial operations and of the actual and potential markets of the penal and correctional institutions of these governmental units, (b) to formulate and present for the approval of the President a program of projects aimed at reorganizing prison industries in such a way that their products should not present an undue burden of competition with the products of private industry "and to eliminate idleness and to provide an adequate and humane system of rehabilitation for the inmates of such institutions"; (2) to recommend to the President loans and grants from federal funds necessary to accomplish the purposes of the President's order.²¹

At the invitation of the state authorities some twenty-two studies have been made, up to September, 1944, and recommendations have been made to the state authorities and to the President. In many cases the states have responded by attempting to carry out at least some of the recommendations. The reports have been inspired by the most up-to-date

²⁰ *Monthly Labor Review*, Vol. LI, No. 5 (Nov., 1940), pp. 1156-1157.

²¹ *Prison Industries Reorganization Administration: Progress Report*, May 15, 1937, p. 5.

penological theory and practice. So far no money has been made available from federal funds to enable the states to carry out the recommendations. Before the organization of this Administration, Georgia had built a new prison at Reidsville with the aid of PWA funds. The Administration is recommending state use, the extension of farming activities, and the development of probation and parole in order to lessen the number of prisoners for whom work must be provided.²²

In order to solve the problem of prison labor in the federal penal and correctional institutions of the United States, in 1934 the Federal Prison Industries, Inc., was organized. It determines the manner and extent of industrial operations in federal prisons and tries to diversify the work so that no single free industry bears an excessive burden from the competition of prison-made goods. In 1940 in twelve of the institutions twenty-six different industries gave steady employment to 3,500 inmates in making goods for the United States government agencies. In that year the value of these goods amounted to over \$5,200,000. In order not to compete too seriously with any one industry and not to have too many inmates working at the shoemaking trade, the Board did not allow the prisons to produce all the shoes required by government institutions; and so with other goods.²³

What is the situation resulting from all these recent activities? (1) The immediate result has been a great increase of idleness in the prisons and reformatories in the United States. (2) A great impetus has been given to the development of prison schools, partly to absorb the idle men and thus aid in discipline. (3) The penal and correctional institutions have been forced to classify their inmates more carefully and to select those who can be trusted to work on farms and camps outside the walls. (4) The diversification of industries within the institution, both for training and for the supply of articles desired by the state, has grown. (5) An increasing emphasis on prison labor as a means of vocational training instead of as a method of economic maintenance of the institutions has appeared. (6) State use has been shown to be not the panacea the labor-unions and the industrialists had contended it would be, but an effective means of cutting down prison products and thus of eliminating the competition of prison-made goods. Whether the labor-unions and the industrialists will stand by the state-use system, should it develop into a means of providing the political units with all the articles they need, remains to be seen. There are some signs in some of the states in which the state-use system is working best that they will not. What they really want is to cut out all competition of prison-made products.

Prison Farms and Other Outdoor Work. Outdoor work for prisoners has been increasing throughout the world in the last twenty-five years.

²² The reports of the Administration on the various state institutions studied are most informing. They may be obtained from the Administration at Washington, D. C.

²³ *Monthly Labor Review*, Vol. LI, June, 1941, pp. 1454, 1455.

At the present time, from considerations of health and the difficulties of labor in prison industries, again emphasis is being placed upon outdoor work. Not only the Southern states but the Northern as well are developing farms on which the prisoners work, and in some of the Southern states road work occupies the time of nearly half the prisoners.²⁴ In Florida prisoners are used also on the farms of other state institutions.²⁵ In Missouri in 1939, 900 prisoners on farms produced all of the provisions necessary for the 5,469 inmates of the five penal institutions.²⁶ In Los Angeles County, Cal., the Forestry and Probation Departments coöperated in establishing forestry camps for minor offenders.²⁷ Wisconsin and a number of other states with cut-over land employ prisoners for reforestation.

In the Philippines about half the prisoners are engaged in outdoor work. In India the criminal tribes are occupied partly in farming or forestry work. Canada's reformatory for young men is largely an agricultural colony. In Germany, especially in Bavaria, in Hamburg, and in certain parts of Prussia, an increasing number of prisoners under the pre-Hitler régime were being worked in the open. The farm colony was one of the outstanding features of the Soviet prison system.²⁸

PAYMENT OF WAGES TO PRISONERS

Closely connected with prison labor, prison management, and prison discipline is the question of the payment of wages to prisoners.

The suggestion of the payment of a small wage to prisoners is not new. The Massachusetts Colony in 1699 paid a wage to the inmates of the houses of correction.²⁹ In 1790 Pennsylvania provided for a prisoner's wage to the inmates of the Walnut Street jail.³⁰ De Beaumont and De Tocqueville in the 1830's reported that in France and in the greater number of the other European states a pecule, or gratuity, was paid the prisoners.³¹ But in the United States generally the practice lapsed until well towards the middle of the nineteenth century.³² Since that time a small wage has been paid in most prisons in the United States based either upon an "overtint," upon the amount produced in an industry, or on a flat rate for all prisoners employed. In a number of other coun-

²⁴ Gillin, *Taming the Criminal* (New York, 1931), Ch. 9.

²⁵ "Florida's Prison Problems," *Correction*, Jan., 1939, pp. 12-13.

²⁶ Eddy, "Missouri Plows Under Crime," *Reader's Digest*, May, 1940, pp. 98-100.

²⁷ Skelley, "Forestry Camps of Los Angeles County," Society of Penal Information, *News Bulletin*, Vol. 9, Aug., 1940.

²⁸ See Gillin, "The Prison System of Modern Russia," in Davis, ed., *The New Russia* (New York, 1933), Ch. 13; Gillin, "Russia's Criminal Court and Penal System," *Journal of Criminal Law and Criminology*, May-June, 1933, p. 290 ff.

²⁹ Cited in Robinson, *Penology in the United States* (Philadelphia, 1921), p. 178.

³⁰ *Ibid.*, p. 179.

³¹ De Beaumont and De Tocqueville, *op. cit.*, pp. 36, 37, 164; Whately, *Thoughts on Secondary Punishments* (London, 1832), p. 36.

³² Lewis, *The Development of American Prison and Prison Customs, 1776-1845* (Albany, N. Y., 1922), p. 220, 333.

tries a small wage is paid, among them New Zealand, France before World War II, Ceylon, the Philippines, Mexico, and Russia.³³

Three motives are behind a wage for prisoners: (1) To keep the economic motive intact while the prisoner is in prison; the ideal plan, could it be made practical, is to charge the prisoner for his keep, and pay him for his work, in order to teach him that even maintenance in a prison depends upon his own efforts. (2) To encourage good work and good behavior; the prisoner is more likely to want to work diligently if his own welfare depends upon his efforts than if he works only for fear of punishment. (3) To enable the prisoner to contribute something to the support of his dependents and to have a fund at the time of his discharge; too often now with only ten dollars and a suit of prison-made clothes at the time of his discharge he is soon tempted to resort to crime in order to exist.

However, the payment of a wage is complicated by the lack of available work in prison for so many of the inmates. Practically by careful classification, those able to work could be paid a wage, if work were available, while the sick, the aged, and the incapable of labor would have to be supported out of taxes.

Thus the problem of prison labor is still with us. Only Soviet Russia, with its prisons made a part of the whole economic set-up, and a few other countries with a carefully devised state-use system approved by both manufacturers and union labor have solved the problem of prison labor to any considerable extent. In this country the attitudes of the public, especially of those groups whose economic interests are most closely touched by prison labor, will have to change, as they gradually are changing, before it will be possible in a democracy to make prison labor a real part of a rational program for the treatment of offenders.³⁴

³³ Hobhouse and Brockway, *English Prisons Today* (London, 1922), pp. 117, 118; Gillin, *Taming the Criminal*, pp. 59, 81; Gillin, "The Prison System of Modern Russia," Ch. 12, and "Russia's Criminal Court and Penal System," pp. 290-312; National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole* (Washington, D. C., June 23, 1931), p. 268; See Weyand, "A Study of Wage Payment to Prisoners," *Journal of Criminal Law and Criminology*, Feb., 1920, p. 591; *The Attorney General's Survey of Release Procedure*, Vol. V, Ch. IX.

³⁴ In a recent communication a former inmate of the Wisconsin State Prison says on this point: "My observation is that the greatest regenerative influence is well compensated work. You will find that the most cheerful and best behaved inmates are those who have been able to secure a position within the institution where they can receive the greatest possible pay. Most of the men have just two things in mind. One is to secure as speedy a release as possible, and the other is to help and support their families or at least maintain connection with them. These things require money, and unless the men are permitted to earn money they are rendered absolutely helpless. This brings about the bitter and morbid states of mind that are so prevalent. To my mind, the first step in reforming the present system is to provide the men with good pay, deducting the actual cost of their maintenance. If the men were well paid a great deal of the expense occasioned by costly structures of stone and steel and by superfluous guards would be eliminated." He adds: "Upon going back over what I have written I find one point that cannot be played up too strongly. That is regarding the compensation of inmates. Every reformatory measure will fail unless that factor,

Should Women and Girl Prisoners Work? From the beginning of the history of prisons female inmates have been compelled to work. From the modern point of view the same arguments for prison labor apply to women as to men. Each inmate should be studied carefully, and the kind of labor assigned for her should be determined by the facts found in her history. Some can be given vocational training in their work, while others would not profit from attempted training. At present the trend is to adapt the kind of work given to the female inmates not only to the capacities of the individuals but also to the vocations open to women. Training in the care of children, for secretarial work, for beauty parlors, for domestic service, for sewing and machine operation of various kinds is being experimented with at the present time. In addition, since many of these institutions are located in the country, it is possible to teach some of the women gardening, dairying, and stock-raising in the hope that after discharge some of them may find employment with people who can depend on them to look after small farms and gardens, and that some of them may marry farmers. As with male prisoners, however, only a certain proportion will be prepared in any thorough way to be vocationally proficient. Here, as there, it is impossible to make silk purses out of sows' ears. Also the term of imprisonment is usually too short for the great majority to insure thorough training.

For the inmates of juvenile correctional institutions for girls, as of those for boys, the work required of them should be subordinated to the purpose of vocational training.

Should Misdemeanants Work? The problem of work for the inmates of jails has been a dismal failure. The number in a given jail is usually so small that it is almost impossible to organize work of any value for the inmates. Contract labor, once practiced in some of the larger jails, has now been outlawed. The turnover in jails by reason of the short sentence is rapid. The only solution proved by experience is systemized labor in the jails and houses of correction of populous political units, such as those that contain the large cities; and state farms for misdemeanants, like that in Indiana, to be discussed later; or like the workhouse of the District of Columbia. In such institutions farm work, simple industries, the products of which are for the use of the political unit, highways, and park work are practicable.

Prison Labor and World War II. That prison labor for a great purpose appeals to the inmates of penal and correctional institutions was shown by the devotion to heroic tasks by the inmates of every prison and reformatory in this country that was given an assignment for war production. They entered enthusiastically into producing as much as possible to promote a successful outcome of the war. They appreciated the op-

which seems solely economic, is considered. Increased pay will increase the productivity of the institutions and decrease administration costs. You might note what has been done in California and Minnesota along this line."

portunity given them to have a part in winning the war. They felt that they were a part of the manpower of the nation. They worked overtime in many cases, not for greater personal income, for in most cases it meant not a penny more to them personally, but that the war might be ended more quickly. Instead of frustration they experienced exaltation, a sense of participation in a great cause. They sensed in some way that they were lifted out of their ignominy in some measure by contributing their share to the all-out production to which every citizen not in active service was called. Except for their intense desire to serve in the armed forces, nothing better shows that the "forgotten man," the prisoner, can be inspired by a great ideal to work for the common welfare.

QUESTIONS AND EXERCISES

1. What are some of the principles of prison labor that have been settled by experience?
2. What are some of the principles that have been partially settled?
3. Discuss the reasons for the economic inefficiency of prison labor.
4. What are the chief benefits of prison labor outside the walls?
5. What are the dangers of prison labor outside the walls?
6. State the social reasons for the payment of wages to prisoners.
7. What is meant by the statement that prison labor must be considered as a part of the whole social configuration?
8. Why is a wage for prisoners desirable?
9. Why is prison labor no problem in Soviet Russia? in the Philippines? in Britain?

Chapter XXVI

PRISON ADMINISTRATION: MANAGEMENT AND DISCIPLINE

Like other aspects of the prison problem the administration has undergone changes in accordance with the mutations in the whole social complex, which, as we have seen, included the ideologies and attitudes of society toward the criminal. The alteration in the once prevalent ideologies and attitudes that governed parents' methods of treating children, for example, has had profound effects on the accepted functions of prison administration. But changes occur only gradually, with the result that in prison administration, as in prison labor and in every other aspect of the treatment of criminals, the old and the new intermingle often incongruously, sometimes indeed in open conflict.

Three Objectives of Prisons. There are three objectives at which the prison aims: *First*, the prison must be made as nearly self-supporting as possible. Let us call this function "management." Prison management is thus concerned with the economic aspects of the prison life.

The *second* object of the prison system is reformation of the prisoners so that they may return to society as useful members instead of social menaces. This function of the prison administration we call "discipline." In actual practice, of course, management and discipline must go hand in hand, and each serves both purposes.

The *third* purpose of the prison is to protect society from the ravages of those who have in free life menaced their fellows. The prison must make every effort to keep the inmates within its control. Both management and discipline are directed to this purpose.

In every aggregate of people with diverse backgrounds administration is of the greatest importance if the objectives of the organization are to be realized. This is especially true of a community of criminals, for it is constituted of individuals who are there, not of their own volition, but by compulsion.¹

¹ Clemmer, *The Prison Community* (Boston, 1940); Nelson, *Prison Days and Nights* (Boston, 1933); Stanley, *Men at Their Worst* (New York, 1943); O'Hare, *In Prison* (New York, 1933); Winning, *Behind These Walls* (New York, 1933); Lawes, *Invisible Stripes* (New York, 1938), Ch. 2.

THE ADMINISTRATORS

Who are the men who administer this prison system? As the institution has grown up in the United States, we have a *board* of men under one name or another, which has the responsibility for the management of the institution; the *warden*, in immediate charge of the prison; the *deputy warden*, who is sometimes called the principal keeper; sometimes *stewards*; *guards*, who are in direct charge of the men; and such lesser officials as are concerned with the maintenance and with the production activities of the prison; *physicians*, *dentists*, sometimes *educators*, *psychologists*, and *psychiatrists*.

Routine Assistants. Let us begin with the man as he enters the prison. Brought in by a sheriff or deputy, he is taken at once to the records office, where the commitment papers are handed over. After proper record is made of these papers, he is usually taken to the Bertillon room, where a series of measurements are taken, photographs made, his fingerprints taken, and a record placed upon an identification card. Thence, after a change of clothing and the delivery of all his possessions—of which a list is made—he is clothed with prison clothing, assigned a cell, and—usually after a period in quarantine—is sent to another official, who puts him to work. In our best-managed prisons to-day, during the period he is in quarantine in addition to the routine just mentioned he is examined physically and mentally, his social history is taken, and all other information is recorded, to be placed before the classification committee whose functions will be described presently. Designated to a particular shop, he is taken thither by a guard, who delivers him to the guard in charge of the shop and the foreman in charge of the industry.

The steward looks after the feeding, clothing, and other creature comforts of the prisoners. Each shop has its foreman, who is responsible for the industrial activities that there occur.

The Guards. Immediately over the men, as representatives of the prison administration, are the guards. The business of these men is to see that no prisoner escapes, to keep order, and to make reports of industrial inefficiency or of breach of discipline. For the most part they are men who are paid a rather small salary, have usually entered the service of the prison young, need not have very much education, have made no study of the psychology of the prisoners or the technique of prison discipline, and have learned the job from observation and from the instruction of the warden and the deputy. They march with the prisoners from the cell house to the shops, back with them to the dining-room, back to the cell house; number the prisoners three times a day; and are in closest contact with the inmates. They are not, however, supposed to converse with the inmates on any but official matters, and then in the briefest possible terms. There is no association between the guards and the prisoners on a common level. They have almost absolute authority over the

prisoners and have the responsibility of reporting all breaches of discipline. Naturally this unusual authority breeds contempt and suspicion and creates a wide gulf between prisoner and guard. In most prisons these guards are appointed by the warden, or by the board in charge, without civil service examination and with no reference to specific educational or experience qualifications. Frequently they are political henchmen. Usually, with certain notable exceptions, they are given no training except what they receive informally on the job.

The Warden and His Deputy. The deputy warden usually is in charge of the discipline and has under his immediate authority the guards. He sees the men sent in for discipline and pronounces sentence upon them with no appeal, except in rare cases to the warden. Thus he is practically an absolute despot in his field. It is under his stern hand that every man's life is ordered. His word may mean progress from one grade to another or demotion to the lowest with the loss of good time, the deprivation of privileges, and punishment of whatever nature he may consider necessary.

The warden, who is the general officer in charge of the prison, often is the business manager of the prison and has his time taken up quite largely with the general economic management. He makes contacts with the administrative board and with the general public. He is the ultimate court of appeals in cases of discipline and management. It is he who checks up the productive records and seeks so to coördinate management and discipline.

The Classification Committee. But with a growing appreciation that the chief function of imprisonment is to prepare the inmate to take a useful place in society on his discharge, it becomes necessary that his place in the institution should be very carefully determined. No one man is able to determine what his treatment should be. It has been found necessary that everything possible should be learned about the man's physical and mental condition, his education, his work experience, his attitudes toward life, his family history, his previous arrests, his relationships with his immediate family—in short, everything that will throw light upon his personality. Therefore, in those institutions that have consciously set before themselves the task of preparing the prisoner for a useful place in society on his discharge, there is set up what is usually called a classification committee, or sometimes a guidance committee. How does this committee function?

While the prisoner is in quarantine on his reception into the institution, the physician gives him a physical examination; the psychologist gives him tests to determine his mental level and, if possible, his vocational aptitudes; the psychiatrist explores his emotional balance, attempts to discover whether he has any abnormal reactions to life situations, and if so, why; some one gets as much of his social history as possible by interviews with the prisoner and by correspondence with

people who knew him in free life, or from reports by probation and parole officers; the chaplain interviews him with reference to his religious affiliations past or present. Then he is brought before the committee for determination as to where he shall be placed in the institution—in what cell house, in what workshop—what educational work he shall attempt, if any, in what recreation he shall participate. This committee, with all the information available before it, does not dogmatically determine these things but talks the whole matter over with the prisoner in the attempt to get him to participate in the formulation of a plan for his life in the prison.

From time to time, as these officers get better acquainted with the prisoner, they again bring him before them, to determine whether the tentative plan is working well. Either at the prisoner's request or on the motion of the committee the plan may be modified. This committee serves, rather than the deputy or the warden alone, to suggest promotion or demotion in rank, disciplinary measures, extension or restriction of privileges, recommendation for parole, and so on. In short, this committee attempts to watch the prisoner's development and adjust the treatment in the institution to the end in view. These records of the committee also are available to the parole authorities when the time comes to consider the prisoner for parole. Thus you have an attempt at real individualization of treatment, and that not at the hands of one or two busy prison authorities but by the concerted judgment of every officer in the institution who knows the prisoner. For on that classification committee sit not only those who examine him when he enters, but the shop foreman, the educator, the recreation supervisor, and any one else who has learned by first-hand contact to know the inmate. Regretfully it must be said that such a classification committee has been introduced into but a few of the state prisons in the United States.

The Administrative Board. In charge of the prison is a board called by various names. Originally the board was called a board of inspectors. It was the business of these inspectors in early times to visit the prison in order to see how the warden or principal keeper was conducting it. Out of that simple board of inspection there has developed in this country a wide variety of authorities controlling the penal and correctional institutions of the various states. In general the trend has been away from the board of trustees for each institution to state boards or directors having charge of all such state institutions. The development in this respect has been analogous to the growth of state administrative bodies as against local authorities in every phase of government. Sometimes this authority is a subordinate part of a larger state department or commission, but in the older states with more numerous prisons and reformatories it is likely to be an independent unit. For example, in Massachusetts and New York the body having charge of these institutions are independent units, while in other states, for example, Wisconsin and Illinois, it is a

part of the board that has charge of the various state welfare activities.

Too often these boards are political appointees, frequently without any reference to their qualifications for this special work. In those states in which public sentiment demands capable management of the penal and correctional institutions, the trend is to select persons with eminent capacities and qualifications for the important task.

MANAGEMENT

If the purpose of management is to make the prison economically productive, what are the ideals of management that the history of prisons in the United States reveals?

Early Ideals in the United States. While management is concerned primarily with economic production, at first it was not a distinct object. It was considered an adjunct to discipline. This is shown by the "penitentiary houses" established near London as the result of John Howard's labors.² This conception of management and discipline also appears in the purposes of the first attempt in Pennsylvania to establish a prison along the lines of these British establishments. However, early in the history of the Pennsylvania system economic considerations were invoked. Also, at Auburn Elam Lynds early saw that the prison could be made to pay.³ In fact, it was at that prison that the demonstration was first made. Lynds maintained that uninterrupted silence and uninterrupted labor were the fundamentals of his system. He confessed that it would be impossible to produce the results Auburn showed without the use of the whip.⁴ In 1840 Mr. Wiltse, warden of Mount Pleasant, or Sing Sing, reported that in the two previous years the prison had made \$111,773 over all expenses.⁵

Introduction of Other Methods of Management. Experiments introduced by some early wardens led them to think that economic self-support and reformation were twin ideals that must be kept in mind. As a result, less inhumane methods of enforcing productive labor and of promoting good conduct in the prison were tried. These were based upon a clearer understanding of the motives that move men to industrial activity and to good behavior. Experience showed that in the last analysis brutality could not be relied upon to promote economic activity. Moreover, society was not insensible to the cruelty of such methods.

Experience has shown clearly that in the successful management of the prison *attention must be given to a classification of the prisoners on the basis of economic ability.* Recent studies have shown that only a part of the prisoners have the capacity to be productive. The New York Prison

² Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, N. Y., 1922), p. 34.

³ *Ibid.*, p. 80.

⁴ *Ibid.*, p. 140.

⁵ De Beaumont and De Tocqueville, *The Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), pp. 199, 201.

Survey Committee said on the basis of a study of 1,515 inmates of four prisons of that state that 20 per cent had technical ability, another 20 per cent were teachable, 40 per cent were capable of running machines, and 20 per cent were incapable. Studies in New York and New Jersey reported by Robinson showed that the inmates of the prisons in those states were very heterogeneous in their personality characteristics, their intellectual levels, their aptitudes, and their ability to do productive work. Such conditions create a very difficult task for both management and discipline, and the New York Prison Survey Committee proposed in 1920 that Sing Sing should be turned into a reception prison where the prisoner should be studied and classified according to his capabilities and that only those prisoners should be used in the prison industries whom this study had shown to have native capacity and training enabling them to be good workmen.⁶ A number of states and the federal government have set apart a building or an entire plant as a reception unit. From this after study the prisoners are sent to the particular institution best suited to their characteristics.

Relation of Management to Discipline. It is still true that the legislatures, and back of them the taxpayers, desire to see the prisons economically self-supporting. It has become clear, however, that a well-managed prison, which takes into account the economic psychology of the prisoner, will greatly simplify the problems of discipline and that good management also promotes good order and the preparation of the inmate for an honorable career when he is discharged. If the prisoner feels that he is being treated fairly in the labor required of him, he will be less likely to be unruly. If he feels that he is useful to society, to his family, and to himself, he will be more contented and more industrious. This has been demonstrated by the reaction of the men in the United States Penitentiary at Atlanta, Ga., and at some state prisons to the appeal to them to produce goods for the men in the armed forces during World War II.

Moreover, we must not forget that the chief purpose of prison management is also the primary object of prison discipline, namely: the social rehabilitation of the prisoner in order to prepare him for a free life in society. Said the New York Prison Survey Committee:⁷

There is something deeper within the soul of man than a surface layer of creature comforts, of wage incentives, of bi-weekly movies, and classrooms and books. We must not assume that these things alone will be sufficient to regenerate the prisoner. The routine of prison life is to-day uniform, repressive, and mechanical rather than vitalizing. The creative impulse which lies dormant in the prisoner must make its start largely through the expansion of the field for self-expression.

⁶ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), Ch. 7; Salmon, "The Prisoner Himself," in *The Prison and the Prisoner, A Symposium*, ed. by Jaffrey (Boston, 1917), Ch. 7; Robinson, *Should Prisoners Work?* (Philadelphia, 1931), Ch. V.

⁷ *Report of the Prison Survey Committee, State of New York*, p. 147.

DISCIPLINE

Jeremy Bentham labored under a psychology of punishment which made him stand for methods of discipline that to-day seem barbarous. In his *A View of the Hard-Labour Bill*, he cited with approval the following provisions in the bill for the punishment of refractory prisoners: ⁸

1. Moderate whipping.
2. Confinement upon bread and water in a dungeon, for any time not exceeding ten days.
3. Or, both the above punishments in conjunction.

Even the Pennsylvania Quakers, who established the Pennsylvania or "separate" system of prisons and who tried to modify the harsh treatment of prisoners, put into operation the cruel separate confinement. However, with all its cruelty it was probably the most humane of the time; certainly so as compared with that of Elam Lynds at Auburn and Sing Sing. Yet Dickens condemned it as most inhuman, and De Beaumont and De Tocqueville described it as severe.

In early days, in neither the Auburn nor the Pennsylvania prisons were there provisions for "good time" off for industry or good conduct. There was no wage to stimulate the prisoners to activity. There was very little provision for communication with friends or relatives. While in Pennsylvania the punishments were chiefly the deprivation of exercise-yard privileges, in Auburn the punishments consisted of the whip, deprivation of food, and solitary confinement.

When De Beaumont and De Tocqueville visited the prisons of the United States they found that: ⁹

Application to labour and good conduct in prison do not procure the prisoner any alleviation. Experience shows that the criminal who, whilst in society, has committed the most expert and audacious crimes, is often the least refractory in prison. He is more docile than the others, because he is more intelligent; and he knows how to submit to necessity when he finds himself without power to revolt. Generally he is more skilful and more active, particularly if an enjoyment, at no great distance, awaits him as the reward of his efforts; so that if we accord to the prisoners privileges resulting from their conduct in the prison, we run the risk of alleviating the rigours of imprisonment to that criminal who most deserves them, and of depriving of all favours those who merit them most.

Nothing could better set forth the concept then prevalent in the United States of the way to get improvement in the prisoner: he must be made to suffer.

The lack of rewards in the American prisons of the time struck the attention of even such sympathetic observers as De Beaumont and De Tocqueville. Reflecting on the lack of rewards in the American prisons for good conduct, they remark: ¹⁰

⁸ Bentham, *Works* (Edinburgh, 1843), Vol. IV, p. 26.

⁹ De Beaumont and De Tocqueville, *op. cit.*, pp. 33, 34.

¹⁰ *Ibid.*, p. 34.

Perhaps it would be impossible, in the actual state of our prisons (in France) to manage them without the assistance of rewards granted for the zeal, activity and talent of the prisoners. But in America, where prison discipline operates supported by the fear of chastisement, a moral influence can be dispensed with in respect to their management.

Yet, experience in our country has shown that even here for the sake of prison order we had to come to rewards.¹¹

However, suggestions had been made for an appeal to other motives than fear by early prison reformers. Thus the bill discussed by Bentham in his *A View of the Hard-Labour Bill* provided for "good time" off for prisoners and for a recommendation for clemency to the king for those sentenced for life.¹²

The governor of Kentucky in 1821, among other recommendations, urged that rewards should be offered that would bring to the worthy prisoners both exemptions and distinctions and that would also shorten the time of confinement and service. He wisely suggested that on departure the inmate should receive a part of his earnings.¹³

An English visitor to the United States in 1827-1828, Captain Basil Hall of the Royal Navy, made some suggestions that later have found realization. He said: ¹⁴

Why, if disobedience be punished, should not obedience be rewarded? And how easy it would be to give the convicts a direct and immediate interest in conforming to the rules of the place! Suppose a prisoner were sentenced to several years' confinement; then, if he behave well for a week together, let one day be struck off his term of confinement; then, if he continues to deport himself correctly for a month, let his term of detention be shortened a fortnight; and if he shall go steadily on for six months, then let half a year be struck off his whole period; and so on, according to any ratio that may be found suitable. . . . If the plan I suggest were adopted, the evils of uncertainty (of sentence) which are great would fall entirely to the prisoners' share, not that of the public, from being made contingent upon their own conduct.

Warden Charles Robinson of the Massachusetts State Prison in 1843 found that discipline to be effective need not be brutal. He made many notable experiments already referred to, such as music, libraries, "good time" off, and a prison society for improvement and self-government.

Said Gray in 1847, referring to the self-government association in the Massachusetts prison:

All such intercourse among them as does not tend to corrupt them, to produce disorder, or to interrupt their labor—if in the presence of an officer—is humanizing and beneficial. If people say this is not the Auburn system, then let us call it the "John Howard System." We've come back to him.

¹¹ *Ibid.*, p. 47.

¹² Bentham, *op. cit.*, Vol. IV, p. 26. Paley about the same time had suggested that a labor, rather than a time, sentence should be given criminals.

¹³ Lewis, *op. cit.*, p. 257.

¹⁴ Quoted in Lewis, *op. cit.*, p. 116. Paley and Archbishop Whately had suggested something of the same sort before. See Paley, *Principles of Moral and Political Philosophy* (London, 1785), Bk. VI; Whately, *Thoughts on Secondary Punishment* (London, 1832), pp. 36, 37.

Says Dr. Lewis concerning this experiment:¹⁵

In truth, this society, more than any other phenomenon of the Massachusetts prison, proclaimed the fact that the Auburn system did not compass all wisdom in prison discipline. Whether the society ultimately failed or succeeded, the first great step had been thus taken in Massachusetts toward establishing inmate interest and inmate participation in the principles and the methods of administration of the institution. And with a prophetic voice, Gray designated the prison as an "asylum and moral hospital for guilt," which, he said, some of the benevolent believed that it should be.

Thus suggestions of better methods of discipline were being made by thoughtful men.¹⁶ In most cases, however, the age was not ripe for these proposals. As was suggested above, brutal methods of punishment were a part of the warp and woof of social traditions of the time. Whipping was an approved method for parents and schoolmasters.

Development of Methods of Discipline. From the first the administrators of our prisons were struggling with the methods of discipline. Various experiments have been tried from that day to this. The first of these was *classification*.

Classification. The law authorizing the changes in the Walnut Street prison in Philadelphia, which provided eighteen cells for the solitary confinement of the most hardened cases and associated labor for the less hardened, was passed in 1790. It was an attempt to classify the inmates *within the institution*. If after five years this experiment proved to be a failure, it was to be discontinued. So remarkable were the results believed to be that by 1794 the legislature reduced the crimes punished by capital punishment to premeditated murder alone. The praises of the new system were proclaimed not only by the advocates of the system but by European visitors, and its fame caused it to be copied by other states of the Union and by several European states.¹⁷

In connection with this apparent success it must not be forgotten that the early success of this experiment was probably due not only to the clear statement to the prisoners that their treatment and their chance of pardon would depend on their conduct, but also to the immediate and personal interest taken in the individual prisoners by these leading Quakers, who as members of the board of managers "had solicitude for many things in the convicts' life. Moral and religious instruction was to be provided through the Bible and other religious books. Divine service was to be held weekly."¹⁸ In short, the success was such by reason of the

¹⁵ Lewis, *op. cit.*, p. 170.

¹⁶ Francis Lieber, Dorothea Lynde Dix, and Samuel G. Howe were the three leading Americans agitating for more enlightened methods of discipline at this early date. Edward Livingston a little later outlined an ideal penal and correctional system for Louisiana. See McKelvey, *American Prisons: A Study in American Social History Prior to 1915* (Chicago, 1936), pp. 24-29.

¹⁷ Lewis, *op. cit.*, p. 29; McKelvey, *op. cit.*, Chs. I, II.

¹⁸ Lewis, *op. cit.*, p. 28.

lack of contamination provided by the segregation of the worst offenders from the others, because of the useful employment given to the less hardened, and because of the individual attention of high-minded persons interested in the reformation of the offender.

A similar attempt was made in New York. In 1815 Eddy, warden of Newgate Prison in New York, recommended a classification of the prisoners as an incentive to industry, good order, and reformation. He suggested three or four classes, progress to be made from the lowest to the highest on the basis of industry and behavior. He suggested that no pardons should be granted from any but the first class, except in special circumstances. He also urged that those convicts who had met the approbation of the managers during their confinement be given a certificate of "liberation on merit" on their discharge. These suggestions anticipated by more than half a century the classification of inmates and parole introduced into the Elmira Reformatory.¹⁹

The so-called "Irish System" was an attempt at classification and specialized treatment of the delinquent. While this system was a forerunner of the reformatory, one of its methods was to classify the criminals *according to grades*. This system, known as the "progressive stage system," was introduced in England by Sir Joshua Jebb and borrowed and further developed by Crofton.²⁰ Crofton, however, set up what he called the *intermediate prison*. The prisoners in this grade slept in movable iron shacks and were engaged with comparative freedom in farming and manufacturing. The purpose of this stage was to ascertain whether the prisoner had gained sufficient self-control to be set at liberty under the ticket-of-leave.²¹ This was a further development of classification within the institution and a forerunner of the classification of adults by separate institutions.

It was long after this grading system was introduced into English and Irish prisons that it was worked out as thoroughly in American prisons. For some time, however, we have had grades or classes of prisoners in our penitentiaries as an aid to discipline.

Another important development in classification, *classification by institutions*, occurred when the *houses of refuge for juveniles* were established. That in Philadelphia was set up in 1828, at first as a private institution. Here the classification was on the basis of age, degree of criminality, and susceptibility to reformation. Similar institutions were erected in New York and Massachusetts soon after.²² A further attempt at classification came with the erection of state *hospitals for the insane*,

¹⁹ *Ibid.*, pp. 59, 60.

²⁰ Ruggles-Brise, *The English Prison System* (London, 1921), pp. 28-30.

²¹ Wines, *Punishment and Reformation*, Revised Edition (New York, 1919), pp. 196-197; Carpenter, *Reformatory Prison Discipline, as Developed by the Right Honorable Sir Walter Crofton in the Irish Convict Prisons* (London, 1872), Ch. 2.

²² *Journal of Prison Discipline and Philanthropy*, New Series, No. 58 (Philadelphia, 1919), p. 24; Lewis, *op. cit.*, Ch. 24.

with provisions for insane criminals. Most of these arose out of the efforts of Dorothea Dix. The movement for the creation of special hospitals for the criminal-insane came very much later, at the end of the nineteenth and beginning of the twentieth century. Further classification among delinquents appeared when *separate institutions were provided for boys and girls*.

As the recognition of *feeble-mindedness* became more general, attempts were made to provide separate institutions for feeble-minded offenders. This made available a place for the treatment of those delinquents who otherwise would have been confined in state prisons or county jails. As yet, however, only a very small number of the mentally defective delinquents are permitted by law to be cared for in such institutions.

In 1869 the New York legislature, at the instigation of men who had studied the Irish system, provided for the building of the Elmira Reformatory. This was a separate institution for young, adult, male first offenders, guilty of the less grave felonies. Thus another classification by institution was established in this country. Note, however, that it was based on age, number of offenses, and the gravity of the crime.

Recent thought has gone much further in proposals to classify prisoners. With the growth of knowledge as to the causation of crime, it has become apparent that neither age nor good conduct in prison nor the legal gravity of the crime is a sound basis for classification. Criminals fall into classes that are not recognized in our penal codes. Many of them suffer from physical handicaps. They differ in mentality and emotional reactions and therefore in self-control, in health, and in vocational skill. It has been suggested, therefore, that *a sound system of classification must recognize these physical, mental, educational, and vocational differences among prisoners*. Hence the New York Prison Survey Committee in 1920 recommended a more fundamental classification of the prisoners. Accepting the earlier classification, which took out of the prisons the insane, the feeble-minded, children, women, and young adult offenders, this committee proposed that Sing Sing should be turned into a new receiving institution where all prisoners would be carefully studied and classified according to their *physical condition, mental characteristics, education, and vocational aptitude*. Here also those who were in need of medical or surgical treatment were to be kept long enough to put them on the road to recovery. In this receiving station an experimental industrial training plant would test prisoners for their industrial capacity, and here would be sifted out and transferred to the appropriate institution those who were mentally defective, insane, or so mentally abnormal that they required a special institution. The committee suggested that *six classes* be recognized:

1. Normal or nearly normal prisoners, who should be assigned to that prison where they may receive the greatest benefit from the work, training, education and general activities of the prison.

2. Those with remediable diseases, both mental and physical. These should be retained at the receiving-station pending recovery and rehabilitation.
3. The insane, who should be sent to Dannemora or Matteawan hospitals for the criminal insane.
4. Mental defectives of the types requiring institutional care. A special institution for these mentally defective criminals should be provided.
5. Certain constitutional psychopaths, especially those with sex abnormalities, should be retained in a special department for study and for special methods and management while plans were formulated for permanent provisions for them.
6. Those with incurable physical diseases. These should be kept at the receiving station at Sing Sing where they might enjoy the benefits of the fully equipped hospital facilities for their relief. This suggestion was also made so that the prisons might be relieved of the burden of their care.

This Survey Committee also recommended that the reformatories for men and women should be combined under the board that manages the prisons and that the reformatory inmates should be handled on the same basis of classification, rather than those hitherto used, namely, age, gravity of the crime, and frequency of offense.²³ As a result of these suggestions New York now has one of the most complete set of institutions for the various classes of prisoners of any state in this country.

The Prison Commission appointed in Pennsylvania about the same time made somewhat similar recommendations. They said: ²⁴

It seems clear that this new knowledge makes for a new classification, based not, like that of the Elmira system, on behavior in confinement, nor, like that of the current penology, on the character of the crime committed, but on the exact study of the individual and that the treatment accorded him must be adapted to the results of such study.

A number of more populous states in this country and several countries abroad—among them a number of the German states before the rise of Hitler to power; Belgium; France; England; Japan; and Ceylon—have tried to classify their prisoners by institution.

In this country there is increasing emphasis upon the use of the classification committee discussed in a previous section and on the receiving prison as the agency by which the distribution to the various institutions is determined.²⁵

Early Punishments. No sooner were prisons established than punishments were invented. Even under the separate system in Pennsylvania, certain disciplinary punishments were thought necessary. Since each man was confined to a separate cell, human ingenuity was somewhat taxed to inflict any further punishment. Reference has already been made to Dickens's unsparing condemnation of the solitary confinement in the

²³ *Report of the Prison Survey Committee, State of New York*, Ch. 7.

²⁴ *Journal of Prison Discipline and Philanthropy*, New Series, No. 58, p. 27.

²⁵ See Gillin, *Taming the Criminal* (New York, 1931), Ch. VII.

Eastern Penitentiary at Philadelphia.²⁶ As early as 1835, when a legislative committee visited the Eastern Penitentiary they found in existence a *graded system of punishments*. The *first* and mildest was a deprivation of the use of the exercise-yard attached to each cell. The *second* included the forfeiture of a dinner each day for a period of two or three weeks. A *third* was the use of the dark cell. In this often a single blanket was denied the prisoner. Every twenty-four hours the inmate was given eight ounces of bread and some water. His sufferings were intense, especially in cold weather. This committee reported that one convict had been in the dark cell for forty-two days and was suffering from delirium when taken out. A *fourth* grade of punishment was absolute deprivation of food for not more than three days. A *fifth* in degree of severity was "ducking," in which the convict was suspended from the yard wall by the wrists and drenched with buckets of cold water. The severity, of course, of this punishment would vary with the season of the year. A *sixth* was the so-called "mad or tranquilizing chair." It was a large box chair made of planks to which the convict was strapped and his hands placed in handcuffs. For the feet there was no resting place. It was impossible to move body or limbs and pain soon became intense. Arms and legs swelled dreadfully. Added to this there was often beating. *Still another* punishment was the "strait-jacket." This was sack or packing cloth of three thicknesses with holes in front for the admission of the hands. In the back there were rows of eyelets by which it could be laced up very tightly. The prisoner was kept in this jacket for from four to nine hours. This committee found that in the Eastern Penitentiary convicts had been so tightly laced that their necks and faces were black with congested blood. So terrible was the suffering that men of the most hardened character would shriek after a short time as if they were on the rack. *The most severe* and complicated of the methods of punishment which the committee found was the "gag." Under this treatment an insane convict had died, and thus the investigation was precipitated. This mode of punishment resembled the stiff bit of a bridle having a wire mouth-piece and chains. Placed in the mouth of the sufferer, it was drawn tightly toward the jaws, the chains being fixed in place by a lock. The prisoner's hands were placed in leather gloves which had wire staples in them, his arms were crossed behind his back and bound by leather straps through the iron staples of the gloves. Other straps were passed around the hands and thence between the chains of the gag at the back of his neck and then drawn tightly, thus forcing his hands up toward his head and his head back and drawing the gag tightly into the mouth. The suffering was almost unbearable and in some cases killed the victim.²⁷ Remember, this was in the institution which had been devised as the most humane of any prison system in America.

²⁶ Dickens, *American Notes*, Ch. 7, "Philadelphia and Its Solitary Prison."

²⁷ Lewis, *op. cit.*, pp. 221-222.

Under the silent system at Auburn, where the men worked in association with each other and where the rule of silence was in vogue, the temptation to communicate and otherwise break the rules of discipline was probably even greater than in the separate system of Pennsylvania. At any rate, the early wardens at Auburn found it necessary to enforce discipline by what seem now very savage methods. While that system under the rigid disciplinarians of the early days excited the admiration of the Frenchmen De Beaumont and De Tocqueville, the order and the discipline that they found at Auburn were secured by the severity of the punishments administered by those early wardens. There the rigorous punishments were openly advocated by such wardens as Elam Lynds, who, when asked if bodily chastisement might be dispensed with, said, "I consider chastisement by the whip the most essential and at the same time the most humane which exists."²⁸ He did not think very highly of solitary confinement, which in his experience had proved to be "often insufficient and always dangerous" and asserted, "I consider it impossible to govern a large prison without a whip."

While there were institutions where such severe punishments were not used, such as the House of Correction at South Boston, where it was claimed not a blow had been struck upon a prisoner for over a decade, and no weapons were carried by keepers, and the Connecticut and Massachusetts state prisons, which were operated with a minimum of corporal punishment, in general the methods of punishment in the early prisons were severe and cruel. In 1843, for example, in the Sing Sing prison in some months a total of as many as 3,000 lashes were given the prisoners. The larger the number of prisoners in an institution, apparently, the more severe and cruel the punishments. In some of these prisons, built on the Auburn plan, many of those severe punishments that we have noticed in the Eastern Penitentiary were in use, such as ducking and the gag. In Sing Sing, where the lash was not used upon women, the gag was sometimes employed. Strait-jackets were used, and reduction of meals to bread and water was common.

In our day these methods seem to be uselessly severe, yet corporal punishment was then in general use in free society. Floggings were customary in the navy, at home, and at school, and even such a humanitarian as Dorothea Dix agreed that for refractory cases the lash had to be used as a last resort.²⁹

Present-Day Methods of Discipline. The spirit out of which those severe punishments grew is still retained in many of our prisons.³⁰

Solitary confinement is still frequently used. In some prisons it is the only form of punishment except the deprivation of privileges now toler-

²⁸ De Beaumont and De Tocqueville, *op. cit.*, p. 201.

²⁹ Lewis, *op. cit.*, p. 328.

³⁰ *Journal of Prison Discipline and Philanthropy*, New Series, No. 58, p. 29; Leavitt, "The Man in the Cage," *American Magazine*, Feb., 1912, p. 535.

ated. These cells are usually dark cells, practically sound-proof as well as light-proof. While in them the man is given a very much reduced ration and is kept there until he promises to mend his ways or until the doctor orders him released on account of his health. The following gives the reaction of the prisoner to this method of punishment: ³¹

Solitary confinement never did any man any good. Repression don't reform a man any more than chaining up a dog makes him gentle.... I don't care how bad a man has been, he can be got. But solitary confinement, with the jacket and kicks and abuse, will never make a man better. I'm not as good a man as I was before I went up there.

The experience, however, of the last seventy-five years has tended to soften the punishment for infraction of rules. Discipline there must be, but early in the present century it began to appear to certain wardens that there are other methods than severe repression. Said Dr. Frank Christian of the Elmira Reformatory: ³²

In the administration of discipline we have entirely abandoned the former desire for vengeance, retribution and repression and now strive always for prevention and reformation. Silence and discipline are no longer synonymous terms in humane prison management. Traditional practices and lack of humane and intelligent administration are still responsible for the continuance of repressive measures. The old method considered only the offense against discipline and avoided the real issue, the offender, his responsibilities and his motives.

Nevertheless, in many of our prisons brutal methods of discipline still remain. ³³

THE PSYCHOLOGY OF PRISON BRUTALITY

What is the psychology that leads prison officials to use harsh methods in the control of their fellowmen? The men in charge of our prisons are not all beasts in human form. Many of them are men of personal uprightness and good citizens. But they are dealing with some of the most desperate criminals in the world and with others who are decidedly abnormal. Remember that (1) *life in a prison is a very abnormal life*. Here are gathered together hundreds of men living under conditions quite unusual, to be discussed in the next section, in the prison community. ³⁴

Wherever the silent system prevails, (2) *discipline must be exercised to prevent communication*. One of the gifts that differentiate men from the lower animals is speech. Therefore when the attempt is made to prevent so natural and desirable a thing as speech with one's fellows, repression is inevitable and punishment multiplies as naturally as vegetation where there is warmth, moisture, and good soil. When, therefore, the officials discover men in communication they become exasperated and often lose

³¹ Lowrie, *My Life in Prison* (New York, 1912), pp. 214-215.

³² *The Management of Penal Institutions* (Elmira, N. Y., undated).

³³ *Report of the Prison Inquiry Commission of New Jersey* (Trenton, N. J., 1917), Vol. I, pp. 73, 74.

³⁴ Leavitt, "An Ounce of Correction, a Pound of Corruption," *American Magazine*, Apr., 1912, pp. 719-729; Fishman, *Sex in Prison* (New York, 1934).

that balance which under other conditions they would maintain.

Added to these considerations are (3) *the unnatural conditions in which the prison officials themselves live*. Consider the irritation of living with men whose interests are diametrically opposed to the responsibilities of the officers. Their life's business is carried on in an atmosphere of emotional repression. The official is an absolute authority. Those under him are practically his slaves. He associates, therefore, during most of his waking life with those who are under constant suspicion. He is subject to as unnatural a social position as are the prisoners. He is constantly engaged in a game of wits with the suppressed prisoner. The latter is constantly tempted to beat the rules of the prison game, and the official as constantly strives to prevent him from doing so. Consequently there is no ground for common human sympathy.³⁵

Add again (4) *the ingratitude of the prisoners toward the officials' efforts to reform them*. Suppose that the official comes in with the desire to help these men. From some of them he gets no sympathetic response, no coöperation, unless it be for the purpose of hypocritically playing upon his good wishes for selfish advantage. Unless he has a very understanding attitude, he judges them all by these. How natural, therefore, to become convinced that most prisoners are incorrigible crooks and immutable ingrates. A deputy warden told me that he would not believe most of the men in his prison under oath. How natural, thus, when all efforts on behalf of the prisoner, under the system of suppression, are met by contempt, effective even though silent, that thoroughly good men turn to bitterness and cruelty.³⁶

To these factors in the psychology of prison cruelty should be added the fact that (5) *some criminals themselves make brutality almost inevitable*. There is the prisoner who has been an enemy of private safety and public welfare. He has struck in the dark and taken advantage of human liberty. He has outraged all of the sentiments and considerations on which social life is organized. Trained in such habits, he carries them with him to the prison and there makes it difficult for the ordinary prison officials to treat him as they would treat him in ordinary human relationships. Because this kind of prisoner is usually mixed up with others, it is difficult with large numbers to individualize the treatment of such men, and prison brutality is almost inevitable when all are treated alike, especially when the officials are not trained in the art of handling men. Until the really antisocial criminals are separated from those who have broken the law but are not habitual criminals, and until we have prison officials better trained, prison cruelty is inevitable under our present system.³⁷ Classification aids in this matter.

³⁵ *The Prison and the Prisoner, A Symposium* (Boston, 1917), pp. 118, 120.

³⁶ Tannenbaum, "The Psychology of Prison Cruelty," *Atlantic Monthly*, Apr., 1920.

³⁷ "The Background of Prison Cruelty," by Number 13, *Atlantic Monthly*, Aug., 1920; Dollard, Doob, Miller, Mowrer, and Sears, *Frustration and Aggression* (New Haven, Conn., 1939), Ch. VI.

Consider also the whole prison set-up. Here are men deprived of liberty against their will. The officials are charged with keeping them safely, with keeping order in an unnatural situation, and with seeing that they work. Often the officials consider the prisoners very much below them in social status. The prisoners are denied the natural expression of their impulses. The officials are their enemies. The whole situation is one that (6) *develops a distinct consciousness of kind in each class, the officers and the prisoners*. Since the officers are representatives of the public, the prisoner feels aggrieved at society. The public widens the gulf still further between prisoners and the public by treating them as a class without discrimination as to individual differences and without discernment as to the varied effect of any given treatment on individuals of different make-up. Thus society makes the class consciousness between society and the offender more acute. Just the contrary treatment should be applied. Every effort of society through the prison officials should be to lessen the social distance between the prisoner and society. Out of this difficult situation grew the horrible barbarities that, until recently, were found in most of our prisons and that still remain in some.

The psychology of prison brutality cannot be understood without reference to (7) *the kind of men who are now employed to manage our prisons and their lack of training for this important work*. The last twenty-five years has seen a remarkable development in the study of human motives. The psychiatrists have uncovered a rich field hitherto imperfectly understood. The psychology of repression, with its issues in human conduct, the members of this school have helped us to understand. The whole psychology of the subconscious was never before so thoroughly explored. How much of our blundering with the direction of human conduct in school, in church, and in the home is due to the lack of understanding of the motivation and the effects of stern repression!

While some of the leaders in our correctional institutions for juveniles have become acquainted with this field of investigation and are remodeling their methods of discipline accordingly, prison officials have been strangely ignorant of this progress in social psychology. It is clear that much of the prison cruelty and stupidity is due to lack of understanding of the men with whom prison officials deal.

The Prison Community. The nature of the prison community creates problems of discipline, and to some degree accounts for prison brutality. Books by inmates of prisons often afford an insight into the nature of this peculiar community.⁸⁸ The most careful study is that by Clemmer, *The Prison Community*,⁸⁹ a study by a sociologist who worked in an Illinois prison. In the prison you have a small community closely guarded from contact with free society. Its members are denied liberty, shut away from

⁸⁸ See especially Nelson, *op. cit.*; Johnson, *Prison Life Is Different* (Boston, 1937) written from the standpoint of a warden; Winning, *op. cit.*; Lowrie, *op. cit.*

⁸⁹ Clemmer, *The Prison Community* (Boston, 1940).

friends, relatives, and all the usual associations of family and free community life. They are all of one sex in each institution and, for the most part, very much of the same age. There is no home life, and very few of the motives that play upon the man in free society operate upon them.

Moreover, it is a peculiar community. The members of it are there against their will, desirous of getting out as soon as possible. They are stamped by judicial action with a social stigma. They comprise a great variety: hardened criminals and chance delinquents, normals and those with personalities warped intellectually, emotionally, and habitually. All of them have broken some law intended for the protection of society. They are supposed to be self-supporting, yet in most prisons they are deprived of the usual economic motives. Instead of working in order that they may be fed, clothed, and housed, they work for fear that they may lose privileges or be punished.

Furthermore, one of the purposes for which they are there is to be trained for social life, yet often they must be silent, must observe many rules that seem intended to make life as much unlike that outside the prison as possible. They get none of the social intercourse common to those on the outside. Thus in the prison community you have the queerest combination of diverse personalities, without the social and economic motives usually depended upon to move men for the better in free society, and yet it is the task of the warden to guard, feed, clothe, house, warm, keep at work, treat when sick, discipline when unruly, and so deal with these men that the institution will be as small a burden as possible to the taxpayers and yet turn men back into society better fitted to live there than they were before. The prison community is marked by impersonality, by an exaggeration of egocentrism. Each inmate is thinking of how best to shorten his time in the institution. While there are intimate small groups in a prison, there is widespread suspicion, lack of most of those characteristics that make for an integrated society on the outside. There is a wide gulf between the officials and the inmates.

There is only one sex in the institution. The ordinary softening influences of home and children are lacking. As Oscar Wilde long ago put it:

The vilest deeds like poison weeds
Bloom well in prison air;
It is only what is good in Man
That wastes and withers there...

The most antisocial characteristics of man are stimulated by the prison rules and the attitudes of the officials. Cringing rather than manliness gets approval. The whole situation is artificial and destructive of those characteristics that make for social adaptation in free society. This situation grows out of society's attitude that the prisoner is not an ordinary human being, but a species apart, and should be treated in a manner different from others. Is it any wonder that such an atmosphere provides

conditions that create problems of discipline, makes it difficult to control the inmates, and provokes prison brutality? Initiative is crushed, natural feelings and impulses are thwarted, and the whole nature is warped.

QUESTIONS AND EXERCISES

1. What are the three great objectives of prison administration?
2. Outline the different kinds of boards that manage and supervise prisons. Read Robinson, *Penology in the United States* (Philadelphia, 1921), Chapter 13.
3. What is the difference of administrative function in management and discipline?
4. What changes have occurred in methods of getting economic production out of prisoners from the days of Elam Lynds to the present?
5. What changes have taken place in methods of prison discipline from the days of Jeremy Bentham to the present?
6. Analyze the elements in the situation to account for brutality in prison discipline.
7. In what sense is the prison community a reflection of free society?
8. Explain the difference between classification within an institution and classification by institutions.

Chapter XXVII

PRISON ADMINISTRATION: RECENT EXPERIMENTS

CERTAIN REFORMATORY MEASURES IN PRISON DISCIPLINE

In the early history of prisons in the United States to allow prisoners any privileges was thought to be incongruous with the purposes of prison discipline.¹ Early in the history of prison discipline some, and recently many more, attempts were made to mitigate somewhat the awful isolation of prisoners, to allow them certain privileges in order to aid discipline. These privileges include writing letters to friends and relatives, occasional visits with relatives, tobacco, reduction of sentence by what is called "good time," movies, increased liberty, educational opportunities, music, radio, books, recreation, outdoor work, and newspapers and magazines. Discipline is maintained in part by depriving disobedient inmates of these privileges. Sanford Bates, former director of the Federal Bureau of Prisons, has remarked that discipline is best in those institutions in which it is most humanely exercised.²

Visits and Mail Privileges. While originally in the Pennsylvania and Auburn prisons no communication whatever with relatives or friends was allowed, in most of our prisons the obedient prisoner is now allowed to write a letter at least every fortnight and to receive a visit once a month. However, only a few of the states allow unrestricted mail privileges. In 1916 there were only eight, five of these in the South, namely, Arkansas, Alabama, Florida, Louisiana, Mississippi, the other three being Arizona, Nevada, and Rhode Island. Since then certain other states have been granting unlimited mail privileges for all well-behaved prisoners. Says Sanders of the Arizona prison, "The abominable rules in force in nearly all American state prisons restricting prisoners' mail are a lasting disgrace to our American civilization. As well expect a giant cactus to grow and develop at the North Pole as expect men and women to become better citizens in a prison holding to these dark-age customs of restricting the writing and receiving of letters, magazines, periodicals and news-

¹ Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, N. Y., 1922), pp. 172-173.

² Bates, *Prisons and Beyond* (New York, 1936), p. 181.

papers. Cut loose the anchor that binds them to the past and give the man and woman in prison every opportunity to grow and develop." He adds, "The wonder to me is that there is not more rioting in the institution denying the prisoners the right of communicating with their loved ones whenever they desire."³ In most prisons this privilege is being extended in frequency.

In 1940 seven prisons in the United States placed no restrictions on visitors. Six more permitted any one except ex-convicts to visit their inmates. Thirty-one permitted only relatives and approved friends. Thirty-six permitted only relatives. Only two prisons allowed an unlimited number of visits.⁴

In some of the more advanced prison administrations it is felt that prisoners' letters and visitors may serve to give the prison authorities a better understanding of the inmate. When adequately trained personnel censor the letters and supervise the visits, such contacts may increase the ability of the administration to understand the strengths and weaknesses of the inmates and thus enable it to individualize better the treatment of the prisoner. That can be done without interfering with the safeguarding of the institution.

In 1932 in Russia the penal authorities were fond of showing how they allowed visitors free access to the prisoners and scoffed at the screens and other devices used in other European countries and in America.

Cell Privileges. In most of the prisons until recently prisoners were not permitted to have any articles except those furnished by the prison. At the beginning of this century, for example, at San Quentin the furniture of a cell provided by the state consisted of a bunk, a small deal table, a stool, a water-can, a coal-oil lamp and a slop-bucket. In spite of the rules, prisoners have always persisted in taking contraband articles into their cells. The result was a perpetual warfare between the prisoners and the guards over these matters. The attempt to fix up the cell by the introduction of any other articles was often a breach of discipline and subjected the man to punishment.⁵ Now in an increasing number of our prisons the first-class prisoners are permitted to adorn their cells.

It has been found that by allowing prisoners a certain small amount of tobacco their irritability is lessened. In some prisons they are allowed to smoke, but only in their cells. Those who chew are usually not restricted in this way. However, the amount of free tobacco is definitely limited. It is therefore very valuable and serves as a medium of exchange between the prisoners in many prisons.

"Good Time" Reduction. The possibility of reducing sentence by "good time" goes back to the warden of the Massachusetts State prison in 1843,

³ Sanders, *Prisoners Mail* (Florence, Ariz., undated) a pamphlet; see also Sanders, "Mail Privileges for Prisoners," *The Survey*, Aug. 16, 1916, pp. 519-520.

⁴ *Attorney General's Survey of Release Procedures*, Vol. V, *Prisons* (Washington, D. C., 1939), pp. 103-108.

⁵ Lowrie, *My Life in Prison* (New York, 1912), pp. 73 ff, 214 ff.

who suggested to the inspectors that, as an encouragement to the prisoners, they be allowed one or two days each month off the sentence in case of good conduct. While the suggestion was not adopted at that time, it has since been quite universally established.⁶

During the course of prison history in the United States the invention of certain other positive devices has been prompted by disciplinary and reformatory motives. Among these are religious influences through the chaplain, the prison school, the prison library, the prison newspaper, the honor system, and prison democracy or self-government.

EDUCATIONAL MEASURES

The Chaplain. The chaplain was introduced into prisons in the early days of their history in the United States, under the theory that what prisoners needed was religious conversion. In most cases, even in those days, the only result was hypocritical conversion for the purpose of getting an easier life and securing privileges. Nevertheless some of these chaplains awoke to the problems of their charges and attempted to introduce constructive measures.

The development of the work of chaplain since those early days has been varied. In addition to preaching to the inmates *en masse* in many prisons he has had added many other duties. In 1939 forty-four prisons reported that as a routine measure the chaplain interviewed the man on admission. In twenty-two he had charge of the library; in nine, of the school; in five he was a member of the classification committee. Less emphasis is now being placed on converting men, and more on the chaplain's taking "advantage of every possible contact where his services may touch the hidden springs which motivate the individual inmate." Sometimes these moments occur when the inmate is depressed or bewildered on admission, sometimes when he is sick or under punishment, often when his family is in need or when the prisoner is worried about them, or in casual contacts in the library, in the school, or on the recreation ground. In any case the religious motive must be geared to a socially adjusted way of life.

In 1920 a committee composed of clergymen representing Catholics, Protestants, and Jews presented to the New York Prison Survey Committee a number of suggestions intended to lift the chaplain from the low position he then occupied in most prisons and to give him the opportunity to dignify his office. They made the following suggestions:⁷

⁶ Lewis, *op. cit.*, pp. 168-169. For details in the various states see *Attorney General's Survey of Release Procedures*, Vol. V, pp. 123-126.

⁷ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), Ch. 14. For a detailed discussion of the chaplain see *The Attorney General's Survey of Release Procedures*, Vol. V, pp. 176-184. For more recent statement of the church authorities see "The Functions of the Chaplain in Penal and Correctional Institutions: Joint Statement of the National Conference of Catholic Charities and the Commission of Prison Chaplains of the Federal Council of the Churches of Christ in America," *The Prison World*, Vol. V, No. 1 (Jan.-Feb., 1943), p. 6.

1. That the state provide the chaplain with adequate facilities as it does other professional men engaged in work with prisoners
2. That in connection with the chapels a parish hall or room should be provided where the chaplains could meet the men for advice, spiritual ministrations and guidance
3. That the governor or superintendent of prisons should appoint a state board of chaplains consisting of representatives of Roman Catholic and Protestant churches and of the Jewish synagogue. A majority of its members should visit each prison of the state at least once in six months to inspect the religious work of the chaplains. These men should serve without pay but should have their expenses provided for. The purpose of this suggestion is that through such a board there should come about greater unity in the religious work of the prison through the formation of a definite policy.
4. That chaplains to be appointed be representative of the religious faiths to which they hold and should be suggested for appointment to the Superintendent of Prisons by the head or governing body of the particular faith which each represents
5. That the chaplain not be looked upon as a person merely to be tolerated in the prison but have a well-recognized position with clear-cut functions in the prison. As chaplains they should be provided such opportunities and accorded such dignity as is comparable with the head of a parish of equal importance.
6. That he be relieved of various clerical and routine duties, such as taking a prisoner's history, inspection of mail, and so on, in which he is placed in a position of withholding from the prisoner some information or confidence, which often interferes with the particular work for which he is employed. The committee suggested that the library should be under the educational department of the prison, in coöperation with the board of chaplains.
7. That the chaplain be a resident officer, instead of merely a visiting official. To this work he should give his entire time, and he should be provided with adequate facilities.
8. That the chaplain be given opportunity to do the social work needed in the relations between the prisoners and their families. Many times readjustment in relationship is necessary upon the prisoner's discharge. If the chaplains are free to make proper arrangements with various church agencies, prison societies, and secular bodies, opportunity is thus provided both for information and for counsel and in preparing for the prisoner's future upon his release.
9. That the chaplain be given opportunity to present the purposes of the prison to the public. Knowing these men rather intimately, understanding their spiritual problems, a properly trained man is prepared to present the work of the prison to the community in a way that would make for proper attitudes toward the prison and the men upon their discharge.

The Prison Library. The chaplains were among the first to notice that a considerable portion of the convicts could not read and write. In 1844, 536 of the 861 prisoners in Sing Sing could neither read nor write, while 210 others could read but not write. Only the better prisons maintained libraries, although a Bible was generally supposed to be in each cell. Connecticut had a small library and also furnished each prisoner with a weekly temperance paper and a religious paper. By 1845 in the Massa-

chusetts prison a library was being maintained by an appropriation of one hundred dollars per year from the earnings of the convicts. Books of a religious and moral nature could be taken out and returned by the prisoners weekly.

In the early period, in such prisons as had libraries, books were distributed at intervals of several weeks at the discretion of the chaplain and the warden. It was early noticed that the freer the use of books, the fewer the cases of discipline. Occasionally small numbers of books were donated by citizens. As early as 1845 this led to regular study by some prisoners in their separate cells in Western Penitentiary of Pennsylvania. Such subjects as arithmetic, geography, and history were studied by the inmates of the prison.⁸

To-day almost every prison has a fairly good library, although much is still to be desired in the number and variety of books. Now the prisoner is allowed one or two books a week, and an effort is made to direct his reading along the lines of his interest and his vocation, although there are also to be found books of fiction and those of general interest. Frequently in the prisons now inmate librarians assist the chaplain in this work. A movement is under way to make the library a more vital force and to employ librarians.⁹

Newspapers. Some prisons, as time went on, permitted the ordinary newspapers to enter the prisons, while in others a newspaper was strictly contraband. In some prisons, even to-day, the only newspapers allowed are the various county papers. The trend to-day is to allow prisoners to subscribe for any but "sensational" newspapers and magazines.

To enable the prisoners to have some medium of expression of their opinions a number of the prisons and reformatories have established institutional papers.¹⁰ The reformatories for adults were the first to emphasize the value of an institutional paper. The *Summary* was established by Brockway at the Elmira Reformatory in the 1880's. Many of the adult male reformatories now have such papers, and some of the prisons.¹¹ To-day it is believed that the prison paper provides *a means for the education of the prisoner*. The trend is towards an inmate editor with some

⁸ Lewis, *op. cit.*, pp. 341, 342.

⁹ National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole* (Washington, D. C., June 23, 1931), pp. 118-122; "Objectives and Standards for Libraries in Adult Prisons and Reformatories," *The Prison World*, Vol. V, No. 4 (July-Aug., 1943), Supplement; *Staff Library Catalog*, Bureau of Prisons, Department of Justice (Washington, D. C., May, 1943).

¹⁰ For special reference to some of these papers a quarter of a century ago see Henderson, *Penal and Reformatory Institutions* (New York, 1910), pp. 236-238.

¹¹ Among the most enterprising and interesting of such publications that come to my desk are *The Agenda* of the Washington State Prison; *The Bulletin* of the San Quentin, Cal., prison; *The Atlantian* of the federal penitentiary at Atlanta, Ga., and *The Candle* of the Wisconsin State Prison. Others are *The Periscope* of the Federal penitentiary at Lewisburg, Pa.; *The Clarion* of the California State Institution for Women at Tehachapi, Cal.; *Hill-Top News* of the Michigan State Reformatory at Ionia, Mich.

supervision by some prison official. Such a publication offers opportunity for instruction in composition and newspaper journalism. If the publication is printed on the institution's press it becomes a means of vocational training for some of the prisoners and enables others to continue the vocation in which they were engaged prior to imprisonment. While the prison prose written by the inmates is often very good, many of the men under the conditions of life in the prison seem to run to poetry. On the whole this is rather poor stuff, although occasionally some fairly good poetry is produced. It is frequently much stronger in sentiment than in poetical form. However, the prison paper provides to a limited degree an outlet of expression in an atmosphere of repression.

A few examples of what is printed in these papers will illustrate what has just been said concerning them. Here is part of an editorial by the assistant editor of *The Atlantian* of the Federal Penitentiary at Atlanta, Ga. It relates to a former editorial of his, which was reprinted in *The Atlanta Constitution*.¹²

The real news angle, I think, is the fact that conditions are such in our cosmos that we can write as we do in *The Atlantian*; that men here are permitted that kind of intellectual freedom which begets and inspires the kind of effusions that you see in these pages. Some of it, now and then, smells. Most of it sort of gets by. And now and then we do a little better than par. But good or bad, the production of this copy is a process unhampered by censorship, uninfluenced by unspoken taboos, and unimpaired by enforced adherence to any sort of policy not sincerely indigenous to the inmates themselves. The warden adds a comma now and then, and occasionally tones down torrid terminology to a temperature that will get past the postal authorities. (After all, we don't want to violate postal laws. You can go to jail for that sort of thing.) But outside of that, it's all the real McCoy that you see on these pages, straight from the factory to you, the consumer.

The Atlantian, you see, is an activity of the department of education, the head of which has a policy which is shared by the warden and, in its further progression, by the Federal Bureau of Prisons. This policy, loosely defined, is that restraint, penologically speaking, shall be only of a physical nature and shall not suppress the thoughts, the hopes or aspirations of men imprisoned. I reluctantly deliver myself of this plug, not because it is undeserved, but because such apothegms have, too nauseatingly often, the saccharine taste of sycophancy. But that's the way it is and that is the real news element about anything in this magazine that makes good reading.

The following was printed in *The Atlantian* recently:¹³

However humble the place I may hold
Or lonely the trails I have trod,
There's a child who blesses his father,
There's a dog who thinks I am God.

Oh, Lord, keep me worthy, Lord keep me clean
And fearless and unbeguiled;
Lest I lose caste in the sight of a dog
And the wide clear eyes of a child.

¹² *The Atlantian*, May, 1941, p. 15.

¹³ "The Greater Thing," *The Atlantian*, July-Aug., 1941, p. 85.

Lest there shall come in the years to be
 The blight of a withering grief—
 A little dog mourn for a fallen god,
 And a child for his lost belief.

Here are a few chosen at random that show the prison attitude toward everyday affairs:

"Never mind waiting for Opportunity to knock upon your door. Open 'er up wide, and hide over behind the desk. When Opportunity comes in, slam the door quick, grab him around the neck, and *don't let go*, till you are certain of your mastery."

"Are you doing your work right? Have you commenced to lay the cornerstone—the part-structure that must bear future inspection? If not, why not? Surely you can see that to delay building identifies you as being shiftless and unreliable! You would not like it said that you are seeking a return trip to prison! Yet, making no effort, evidencing no desire to build a new structure, so to speak, classes you of the number of men who find prison and its environment homelike."

"Quit your whining; brace up; go to work; be something; stand for something; fill your place in the universe. Instead of whining around, exciting only pity and contempt, face about and make something of yourself. Reach up to the stature of manhood and womanhood. There is nothing the matter with you. Just quit your whining and go to work."

"Turn over a new leaf, fellows! Begin to-day! Do not foolishly refuse to work, for you are ALWAYS the loser. And you fellows who do not exactly refuse to work, but who do your work in a slovenly manner and only half complete it; you, too, are forming habits of laziness which will cling to you as barnacles do to the bottom of a ship."

"Though you may not meet with the loved ones to-day as you would like, you can at least give your memory the pleasure of going back to those good old days when you were a care-free child. A merry Christmas to you."

Most of them have copious jokes. A few samples will indicate their character:¹⁴

"TOURIST: What a quaint little village. Truly, one half of the world is ignorant of how the other half lives.

"NATIVE: Not in this village, mister, not in this village."

"Heah, Joe, is that two bitises I borrowed from you two years ago."

"Just keep it. It's worth more than two bits for me to change mah opinion of you."

"Patient comes out of ether and notices the blinds of his room drawn.

'Doctor, why are those blinds drawn?'

"Said the doctor: There's a big fire across the street and I didn't want you to come to and believe the operation was not a success."

"Wife (vetoing the idea that they vacation in the country): 'But country air would disagree with me.'

"Hubby: It wouldn't dare, my dear, it just wouldn't dare."

"Landlady: A professor formerly occupied this room. He invented an explosive.

¹⁴ *The Candle*, August, 1941, pp. 26, 27.

"New Roomer: Ah, I suppose those spots on the ceiling were made by the explosive?"

"Landlady: No, those were made by the professor."

One other purpose served by prison journalism is that these papers serve as a method of *informing the outside world of the life of the prison*. This new trend began to appear about 1915. More than twenty-five of these institution journals now reach the outside world, and their purpose is to further the cause of prison reform. This aspect of prison journalism has attracted the attention of writers in outside newspapers. While once the prison press refrained from criticizing penal institutions, the recent trend shows a tendency freely to express the prisoners' opinion on reformation suggested by outside people and to criticize reports on penal methods.

In the last few years the standard of prison journalism has improved. No longer do most of them give evidence of a cramping censorship.¹⁵

The Prison School. Out of the simple beginnings cited in a previous chapter and the rudimentary educational system in Crofton's Irish System grew the program for the training of young prisoners in the Elmira Reformatory in the 1870's. This conception has now spread to some extent to the prisons, since we have come to feel that the proper way to prepare the men for life outside is to give them some training in the things that their previous life denied them.

So far as penological theory is concerned, what are the objectives of education for prisoners? Since the great majority of prisoners are released again into free society, should not the objectives include those sought for any adult? It seems that the following types of education should be provided for prisoners:

(1) *Elementary educational fundamentals* to provide the tools needed in further study and training and in everyday life. Of the 218,000 adult prisoners in American prisons and reformatories in 1940, it is probable that about one-sixth cannot read a newspaper or write a simple letter. Over seven-twelfths cannot pass the sixth-grade work in public schools. About the same proportion have not had organized training for an occupation. Nearly one-third have a vocational training less adequate than their intelligence rating would indicate to be possible and desirable.

(2) *Training for an occupation.* About seven-twelfths of the 218,000 are unskilled workers. Often they get into difficulty by reason of this economic handicap. Serious students of the problem have suggested a careful study of the incoming man to ascertain for what vocation he is best adapted and to provide him with training for that work.¹⁶

The New York survey showed that in 1920 from 12 to 20 per cent of the total prison population in New York were capable of learning a skilled

¹⁵ "The New Prison Journalism," *Literary Digest*, Jan. 22, 1916, pp. 179-180. For examples of the outlook of these prison journalists on all matters affecting criminals and on world affairs, read any of the better prison publications.

¹⁶ McCormick, *The Education of Adult Prisoners* (New York, 1931), Ch. II.

vocation requiring initiative, intelligence, and skill. From 22 to 25.5 per cent were capable of doing the factory type of work. In other words, somewhere in the neighborhood of 40 per cent were capable of industrial training for skilled or semiskilled vocations. It is upon this 40 per cent that the prison should concentrate its energies in the endeavor to educate men for a return to useful economic life when released. For the others, something perhaps can be done in the way of teaching them good habits of work at less complicated positions.¹⁷

As a result of a study made by a Commission to Investigate Prison Administration and Construction in New York (Lewisohn Commission) a thorough reorganization of education in the prisons of that state was proposed. The reorganization of education was based upon the Commission's suggestions for a radical reorganization of the whole penal and correctional system of that state. After pointing out the deplorable conditions as to educational facilities in the penal and correctional institutions of that state the Commission recommended: ¹⁸

that the necessary facilities and personnel be provided to develop in the State's prisons and reformatories a progressive educational program including general educational training, vocational guidance, and vocational training. If the majority of inmates are to be returned to society better equipped for social and economic citizenship than they were at time of commitment, they must be trained for occupational competency and be given sufficient educational training to become intelligent members of society. Special attention should be paid to the development of better educational programs for the young persons in the reformatories and the first offenders committed to prisons.

These recommendations have not been thoroughly carried out in that state, but great progress has been made in all the institutions, and almost ideal programs are in operation in the new medium security institution built at Wallkill on the recommendation of the Commission.¹⁹

Education of the inmates of prisons and reformatories is no longer to be looked upon as a thing apart from the other activities of such institutions. The educational process should permeate every activity of prisons and reformatories. It should not be a mass affair; but a process adjusted to the peculiar needs of each individual inmate. It should follow the most progressive educational methods employed in the public schools. More of the details of this new educational program will be discussed in the chapter in reformatories for adult males.

(3) *Health education*, intended to acquaint prisoners with the fundamentals of personal and community hygiene, should be provided. The

¹⁷ *Report of the Prison Survey Committee, State of New York*, pp. 106-109.

¹⁸ *Report of Commission to Investigate Prison Administration and Construction*, presented to the Legislature of the State of New York, Feb. 15, 1931, p. 51. For the detailed educational program recommended by this Commission see the special report by the same Commission, *An Educational Program for New York State's Penal System*, Jan., 1932.

¹⁹ For a detailed report on the educational setup at Wallkill see *Annual Report, Wallkill Prison*, July 1, 1939-June 30, 1940.

recreational program of the institution should be geared into this training.

(4) *Cultural education.* The prisoner finds plenty of time on his hands that even now he sometimes uses to secure acquaintance with the best thought of the ages. Many prisoners have found in prison for the first time the intellectual joy of sharing the thoughts of great minds.

(5) *Social education*, which includes acquaintance with fields of knowledge relating to ethical conduct in the complex conditions of free society, is a necessity.²⁰

Prison administrators who have experimented with education of interest to the prisoners have found that *it very greatly aids discipline*. For the most part, however, any program for the education of prisoners is still largely an ideal. The state responsibility in this respect, however, will not be discharged until after careful investigation of the men and more extended experience it has been determined just what educational measures are useful for the purpose of rehabilitating prisoners for a useful life in the world.

The United States Bureau of Education has taken an interest in these schools. In 1913 it published a study of the prison schools in the United States and Canada. From another study made by the United States Bureau of Education in 1923, it appeared that in the ten years between the first study and the later one some progress had been made, chiefly in the direction of focusing public attention and clarifying thought on the possibility of reformation through education. San Quentin prison in California, and the Wisconsin state prison, according to this report, seemed to lead the prisons of the country in their educational programs. Since that time considerable progress has been made in the educational work in American prisons. The federal prisons probably have made the greatest progress.

Taking it all in all, the educational situation in our state prisons is very bad. In 1930 thirteen and in 1936-1937 fourteen had no educational program whatever. In about the same number educational work of some significance is being carried on. In the remaining three-fifths what is called education is almost valueless. The best programs are to be found in the reformatories for women. Nevertheless, some promising beginnings have been made in men's prisons and reformatories. In California and Wisconsin the most effective work is being done by the extension divisions of the respective state universities. In the federal institutions and in a number of states, among them California, Kansas, New Hampshire, Ohio, Illinois, and New Jersey, promising work has been started either in coöperation with state educational departments or by special educational

²⁰ McCormick, "Education in the Prisons of Tomorrow," *Annals of the American Academy of Political and Social Science*, Sept., 1931, pp. 72-77; *The Education of Adult Prisoners* (New York, 1931). The Gluecks found somewhat lower percentages among their 500 *Criminal Careers* (New York, 1930), p. 132, but these were reformatory inmates in Massachusetts, which has educational standards somewhat higher than many states.

divisions for the prisons and reformatories.²¹ In Wisconsin, New Jersey, and Minnesota the Free Library Commissions are doing splendid work in providing for the prisoners books that are not in the prison library.

Supervision has been one of the grave difficulties in connection with the prison schools. The New York Prison Survey Committee in 1920 proposed that this difficulty should be solved by the State Department of Education's cooperating with the prison board in placing a civilian supervisor in each of the institutions.²²

Prison Education in Europe. In a number of European countries before World War II educational programs were being developed. These on the whole were of a somewhat more informal nature than in the United States. For example, in pre-Hitler Germany the educational programs varied with the different states. In certain of the Prussian prisons in 1932, as for example at Celle, there was an educational director in charge of the entire program intended to develop the prisoners intellectually and socially. In Thuringia the emphasis was upon education of a group nature, largely through the organization of the highest grade (Stufe) prisoners but in close contact with certain of the officials charged with this aspect of their treatment. In that state the development of what was called the Fürsorger, or what corresponds somewhat to the social worker, had educational value. In general in Germany the social development of the prisoner was not so dependent upon formal educational activities as with us.²³

In Belgium, aside from the incidental learning of a trade in her institutions, the avowedly educational features are confined rather closely to the institutions for young adult offenders. She has an industrial school and an agricultural school for young adult delinquents. However, here as in Germany the educational process is much more dependent upon careful study and individual treatment by the officers than upon formal classes.²⁴

The modern Russian prison system under the Bolsheviks has an educational set-up closely integrated with the system of schooling to be found in free society. Elementary classes are held in the prisons and correctional colonies besides the informal education through self-government activities and the organization of clubs, classes, and so on, and the activities of the Red Corner in each prison. Just as the factory or the collective farm car-

²¹ McCormick, *op. cit.*, p. 74; see also *Handbook of American Prisons, 1929* (New York, 1929), "Education," under each of the various institutions described.

²² *Prison Schools*, United States Bureau of Education, *Bulletin*, Whole No. 537, 1913, pp. 17, 18; *Report of the Prison Survey Committee, State of New York*, Ch. 13. For the situation in the institutions for adult offenders in the United States in 1936-1937 see *Attorney General's Survey of Release Procedures*, Vol. V, Part I, Ch. X, Part II, Ch. VII.

²³ Von Hentig, "Germany's Prison System," *Annals of the American Academy of Political and Social Science*, Sept., 1931, pp. 174-179.

²⁴ Gillin, *Taming the Criminal* (New York, 1931), pp. 194-201; Frede, Vollrath, and others, *Gefängnisse in Thüringen, Berichte über die Reform des Strafvollzugs* (Weimar, 1930).

ries on adult education, so the prison or the correctional colony, whether agricultural or industrial, provides a carefully worked out program of educational activities.

Physical and Mental Health. The conditions, physical and mental, found in the prisons and reformatories are in many respects the most difficult faced by physicians. Consider that congregated within those walls are society's misfits. Every study of prison populations has shown an unusual number of the physically and mentally handicapped. The age group is young. Often the prisoners have lived a very irregular life. The incidence of venereal disease is high. The prisoners are of an age when tuberculosis is most rife. The proportion of mentally subnormal is great. Many of them have been dissipated. In addition the life in prison conduces to physical and mental impairment. Life in a prison is vastly different from that in free society. Too much of it is lived without the usual amount of air and light. On the other hand it is regular, and so far as regularity contributes to good health life in the prison is wholesome. But that very regularity often leads to a monotony inimical to good physical and mental health. There are no women in a men's institution, a condition in itself that induces practices and ideologies conducive to physical and mental breakdown. The atmosphere is repressive, especially to men who have lived a free and easy life. They are men apart, stigmatized, disgraced, torn from their families and friends, surrounded by an atmosphere of suspicion, hate, and irritation.

The attitudes of free society towards prisoners not only account for many of the other problems in prisons and reformatories but explain the neglect that hitherto marked, and even to-day characterizes, the provisions for the health of the inmates. While every state prison supplies some degree of medical care for the inmates, in the majority the staff and the equipment are inadequate. The result is that they meet only the day-by-day requirements of the prison population. In only a few prisons have the medical staff, including the psychiatrists, been able to show any interest in the fundamental implications of medical service. Few are doing any research or conducting experiments in criminological research. Material for such research is abundant. Where classification committees have been established, the physicians and psychiatrists, if qualified, have been able to make a contribution to the individualization of treatment. In too many institutions the physician, the psychologist, and the psychiatrist are subordinate to the whim of the administrative officials. Consequently they are unable to carry out their programs. In 1937-1939 only ten of the eighty prisons and reformatories reporting had hospital standards meeting the requirements of the American College of Surgeons. Only four of these had actually been approved by that body. In 1939 the *Attorney General's Survey of Release Procedures* reported that medical care in the state prisons varied from what is equivalent to first aid to that of complete medical and surgical practice, with the majority falling into the former category;

and that only occasionally did prison practice have any direct relation to the criminal problem or to medical research.²⁵

Quite in contrast with the situation in the state institutions was that found in the federal prison system. There medical service was controlled by the United States Public Health Service. The above report states that in these institutions it found "the most complete medical service rendered in any prison system in the world." It had one bed for every ten inmates, whereas the state institutions had one for every twenty-five. Of the thirty-one institutions under the Bureau of Prisons in 1940 every one except three prison camps and one correctional institution had complete hospital equipment. The standard of service set for the federal prisons and correctional institutions was that provided for beneficiaries of the federal government in Marine, Veterans', and Army, and Naval hospitals.²⁶

The Honor System. In recent years a great deal has been said about various methods to replace the old methods of repression and brutality in the government of prisoners. As we have seen, various experiments were made quite early in self-government.

The honor system, that is, trusting men to govern themselves either within the prison or on special duty outside, has since been rather largely employed in our prisons. Not all men, of course, can be put upon their honor and trusted. Very careful selection must be made, and even then frequently the "trusty" escapes.

Perhaps the best results of the honor system have been seen in the road work by gangs of prisoners and in reforestation and farm work, forms of labor very much more desirable to most prisoners than work within the walls. The motives that keep these men from escaping are the fear that they will be sent back inside the walls if they attempt to escape and are recaptured, and their preference for the work outside, where there is relative freedom, less severe discipline, and in some states extra "good time."

It must be admitted however, that the honor system within the walls has its limitations by reason of the fact that only a minority of the inmates of a prison can be relied upon outside the walls unless strictly guarded.

Moreover, it has been charged that the honor system produces hypocrisy, which has its worst development in the "stool-pigeon." A "stool-pigeon" is a prisoner who is given special privileges for keeping the officials informed concerning any plots or disobedience of the regulations within the prison. Moreover, it is not self-government but benevolent despotism, heading up in the prison official with the honor men his subservient tools. It appeals to selfish motives and does not stimulate initiative or self-control when outside the influence of the dominating personality of the warden or other officials.²⁷

²⁵ Vol. V, Part I, Ch. VII.

²⁶ *Ibid.*, Part II, Ch. V.

²⁷ Osborne, *Society and Prisons* (New Haven, Conn., 1916), pp. 212-216.

Prison Democracy. A plan for the government of the prisoners diametrically opposed to the honor system is inmate self-government or, as it is sometimes called, prison democracy. This plan originated with Osborne of Auburn, New York, when in 1913 as a member of a prison commission appointed by the Governor to study the prisons of New York, he spent a week in Auburn prison to find out for himself conditions in the prison. As a result of Osborne's experience and his talk with a number of inmates, he helped to organize what was at first called a Good Conduct League, to be officered and managed by the inmates. On Lincoln's birthday, 1914, the first meeting of this League, now called the Mutual Welfare League, was held at Auburn. It was frankly an experiment to see what the prisoners could do in the problem of self-government. A year later a branch of the League was organized at Sing Sing.

When it first started, its activities were absolutely in the hands of the prison authorities. Whatever it did was with the consent and under the close supervision of the warden and subject to his proper authority.

The organization of the League was simple. At Sing Sing it was as follows:

Each industrial or maintenance unit elected one or more representatives to the governing body of the League, called the Board of Directors. The election of these representatives was entirely in the hands of the inmates, without pressure or dictation of the authorities, on the theory that otherwise the men would lose faith in their representatives. This board elected a secretary of the League and from its own number an executive committee of nine. This executive committee appointed the necessary number of assistants to keep good order and discipline in the prison. There were nine sub-committees, each headed by one member of the executive committee. These committees at Sing Sing were membership, industries, hygiene, education, athletics, entertainment, music, visitors, and outside employment. When there were any cases of discipline, court was held each afternoon and the offenders brought before this judiciary body or court. The members presided in turn and a majority decided what was to be done. Punishment consisted of exclusion from the League with the consequent loss of all privileges. An appeal was provided for to the warden's court, consisting of the warden, the principal keeper, and the doctor. At Sing Sing, election of directors was held every four months, and the prisoners were expected to vote without dictation or direction from the authorities.

The fundamental psychology of the League was that men must be prepared for self-control outside the prison by organized self-control within the institution. It was further felt that many of the difficulties that arose under the ordinary disciplinary system were done away with when the control of the men was in the hands of the members of their own group. It was held that the League also stimulates initiative, gave opportunity for self-expression and developed regard for others, because if the League

failed to maintain good discipline, the privileges provided by it were forfeited. Instead of endeavoring to crush the prisoner's spirit, it tried to encourage loyalty to his pals and to the prison community by making it worth his while to have a well-ordered society within the prison. As Osborne says: "It does not wish to produce good *prisoners*, it aims to train good citizens."²⁸

This idea of self-government has found acceptance in a number of institutions besides Auburn and Sing Sing, into which Osborne personally introduced it. About the same time that Osborne organized the Mutual Welfare League at Auburn, Calvin Derrick organized a system of self-government in the Preston School of Industry at Ione, Cal.²⁹

The self-government movement spread rapidly for a time. It was introduced into a number of the county penitentiaries in the Eastern states, into some of the reformatories, and certain of the prisons. Osborne introduced it at the Naval Prison at Portsmouth, N. H., when he was commandant during World War I.³⁰

After these years of experience most institutions into which it was introduced in this country have either discontinued it or have seriously modified it. It cannot be applied to all inmates of an institution. Possibly it would work fairly well if prisoners could be segregated into small, homogeneous groups. It works well in many camps in which not more than fifty men are kept. Wisconsin has nine camps none of which has a single guard and each of which has but one foreman. Trouble is infrequent and escapes few.

Also in some of our institutions in the last few years there has developed the *inmate council*. This is a selected body of inmates, which advises the administration upon conditions in the institution of concern to the welfare of the inmates. Also in some of the federal institutions and in a few state reformatories there is an honor cottage in which much of the discipline is managed by the inmates. There is still need for the wise official to guide the men who are actually running the organization. Nor was the influence of this plan limited to this country. I found modifications of it in penal and correctional institutions in a number of foreign

²⁸ Osborne, "Self-Government by the Prisoners," in *The Prison and the Prisoner, A Symposium* (Boston, 1917), pp. 101-106.

²⁹ Derrick, "Self-Government," *The Survey*, Sept. 1, 1917, pp. 473-479.

³⁰ Hubbard, "Self-Government in a Reformatory," in *The Prison and the Prisoner, A Symposium* (Boston, 1917), pp. 106-114; Slade, "Books and Boys in Portsmouth Prison," *The Survey*, Dec. 28, 1919, pp. 309-310; Lawes, *20,000 Years in Sing Sing* (New York, 1932), pp. 112-125; *Twenty-seventh Annual Report for the Commission of Prisons* (New York, 1921), pp. 73, 77, 79, also pp. 72, 74; Lane, "The Sing Sing Stabbings," *The Survey*, Jan. 22, 1916, p. 496; Osborne, "Common Sense in Prison Management," *The City Club Bulletin* (Chicago), July 17, 1916, p. 135; *Prison Leaflets*, No. 33, National Committee on Prisons, New York, Apr., 1916, pp. 2, 3; Tannenbaum, *Wall Shadows* (New York and London, 1922), pp. 76-78; "Prison Democracy," *The Atlantic Monthly*, Oct., 1920, pp. 433-434; Dorner, "The Prison Officer," in *The Prison and the Prisoner, A Symposium*, p. 123. See also National Commission on Law Observance and Enforcement, No. 9, *op. cit.*, pp. 122-126.

countries in 1927-1928: the inmate court and inmate police system in the Philippine prisons and penal colonies; the Disciplinary Prison Orderlies' League and the Boy Scout troop for juveniles in Ceylon; the "circle of the broken chain" in the agricultural colony for male young adult offenders at Merxplas, Belgium.⁸¹

A modified self-government has been introduced into some of the German prisons and in the Russian correctional institutions. In pre-Hitler Germany, especially in Bavaria, Saxony, and Thuringia, the highest grade (*Stufe*) of prisoners was permitted in some institutions to organize community activities in rooms set apart for that purpose. Dramatics, music such as orchestras and group singing, discussions, and lectures were carried on by upper-grade prisoners themselves. What has happened to these activities since the Nazi revolution?

In Russia the prisoners are organized for self-government to a remarkable degree. It must be remembered, of course, that the governing group among the prisoners is for the most part a select group from the prisoners of worker or peasant origin. The prisoners have their meetings at which problems of prison administration are discussed, suggestions are made, and courts are held for the trial of prison offenders.⁸²

The Iwahig colony in the Philippines shows what can be done by good administration through the self-government of prisoners. In 1927 when I visited the institution about 2,000 men were living at the central station and in groups of from thirty to sixty scattered over the 105,000 acres of the colony. There was only one gun in the whole colony, and that was in the office of the superintendent.⁸³

Wardens. The crucial point in any system of prison administration is the kind of warden at the head of the institution. He has a very difficult task. The position calls for qualities of the highest character, the greatest resourcefulness, a thorough understanding of criminal psychology, and a faith in the possibility of turning some of these men from their evil ways to a normal social life. It also calls for first-rate business ability, because upon the warden's management depends the financial success of the prison. He must not be sentimental, but he must have a fine sense of justice.

Wherever prisons have been a success it has been because of extraordinary men at the head of them. This was true even in the earlier days of American prisons. The few wardens whose names stand out above the others in the history of American prisons are men of extraordinary personalities: Elam Lynds, sternly repressive, but a man of clear mind and dominating personality; the Pillsburys, Moses and Amos, of the Connecticut prison at Wethersfield, combining sympathy with firmness and resourceful-

⁸¹ Gillin, *op. cit.*, pp. 46, 85-88, 92-95.

⁸² Gillin, "Russia's Criminal Court and Penal System," *Journal of Criminal Law and Criminology*, May-June, 1933, p. 309.

⁸³ Gillin, *Taming the Criminal*, pp. 54-61.

ness; Sam Parsons and Morgan of Virginia; and Brockway, a student of Amos Pilsbury at the Connecticut State Prison and later manager of the Detroit House of Correction, first superintendent of Elmira Reformatory and one of the greatest practical administrators of reformatory institutions in the country. De Beaumont and De Tocqueville noticed that even at the time of their visit to the United States in the early 1830's the position of warden in the American prisons had attracted persons at once intellectual and respectable.⁸⁴

Unfortunately a similar list of worthies among prison administrators until recently was lacking. Interest in prison matters lapsed and good men were not attracted. The newer reformatories drafted men like Brockway from the older institutions. Only since the beginning of this century has interest in prisons once more revived by reason of the work of a growing group of intelligent and earnest wardens and board members. Once more the importance of proper administration of the prisons is commanding attention.

An ex-convict has expressed the matter so well that I cannot refrain from quoting him. He says: ⁸⁵

Some day the people will realize the fact that the man at the head of a State prison should be just as capable and efficient as a man at the head of a university, for every aspect of human life and character is contained within the four walls of the penitentiary. And some day it will not even be necessary to have walls of brick and stone at all.

As a matter of fact, however, it is unfortunately true that most of the wardens in the past have been selected from other considerations than the qualifications that have been mentioned.⁸⁶

Other Personnel. Only less important than the warden are the other administrative personnel. *The guards* come into most intimate touch with the inmates. Too often in the past they have been of inferior quality. This has been due to the low pay, long hours, selection on the basis of political preference, and the notion that their chief function was to keep order. In some state prisons and reformatories recently emphasis has been placed on a standard of wages, hours of work, and functions that would attract a more capable body of men. Civil service has been introduced in some parts of the country, and, while it will not guarantee the selection of properly qualified personnel, gives the administration a chance to select those who are better qualified and protects it against the politician in some degrees.

In a small number of states and in the federal institutions *training* of the guards has been introduced. Shining examples are New York, Massachusetts, New Jersey, and Missouri, which have organized training courses.

⁸⁴ De Beaumont and De Tocqueville, *The Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), pp. 28, 81-82.

⁸⁵ Lowrie, *op. cit.*, pp. 420-421.

⁸⁶ Dorner, *op. cit.*, pp. 117-118.

The Federal Prison Bureau since its reorganization in 1930 has been carrying on programs of in-service training in most of its institutions. If the institutions are to be really correctional, the officers who come into daily and close contact with the inmates must understand human nature enough to have some insight into the behavior of prisoners and thus know better how to handle them in a helpful manner. They may not be expected to be psychiatrists, any more than the teachers in our schools must be, but they should know enough about human motivation to understand that when a prisoner refuses to work, disobeys orders, curses the guard, gets into a fight with an inmate or a guard or acts queerly, that prisoner needs the attention of some one who is a specialist in human behavior. Experience has shown that such training is helpful.

A beginning has been made in some states and in the institutions under the Federal Bureau or Prisons to introduce *special personnel* to meet the need of greater understanding and skill in handling the often troublesome inmates. This personnel is constituted of educational and recreation directors, psychiatrists, psychologists, sociologists, and case workers. If the administrative body and the warden look upon the function of the institution as chiefly custodial, and industrial then these special workers are usually looked upon as merely advisory persons, if not nuisances. On the other hand, if the function of the institution is conceived to be really correctional, these special officers are used as active parts of the institutional personnel coordinate with every other division—the medical, dental, industrial, custodial—in order to understand the individual inmate and contribute to his reorientation to society's demands. In the Norfolk, Mass., Prison Colony, the Annandale, N. J., Reformatory, the Prison at Wallkill, N. Y., and at the Intermediate Reformatory at Alcoa Farms, Mo., the guard force is clearly recognized as only one division of the administrative personnel. Here the classification committee, the case-work division, the service unit, or whatever name this unit bears, functions as the coordinating agency between the industrial, medical, recreational, educational, religious, welfare, and custodial groups. These are most interesting experiments in the endeavor to bring to bear upon the inmates every bit of scientific knowledge and practical skill in solving the behavior of the inmates.³⁷

INDIVIDUALIZATION OF TREATMENT

The big problem in discipline is to be able so to organize a prison that each man may be studied and treated according to his needs. Assume that

³⁷ *Attorney General's Survey of Release Procedures*, Vol. V, Part I, Ch. III; Klinger, "Prison Officers' Training Programs," *Prison World*, Mar.-Apr., 1941, p. 14; Rosenberger, *Physical Training*, United States Prison Service (Washington, D. C., 1943); Hammack, *Training and Promotion in the Federal Prison Service*, *United States Service Study Course*, Bureau of Prisons (Washington, D. C., 1941); Gill, *Prison Officers Training: Introductory Course*, U. S. Office of Education (Washington, D. C., undated); Kendall, "Guard Training, a Continuous Project," *Prison World*, Sept.-Oct., 1941, p. 6.

the warden has sufficient guards and other helpers to have one prison official for, say, each twenty-five inmates, and this number is more than twice that reported for each guard in the *Handbook of American Prisons and Reformatories, 1933*; is it not fair to say that something is wrong, when, as it is claimed, the officers have very little, if any, influence on the rehabilitation of the inmates? Is it because the officers do not conceive that their duties include such relations with the inmates as will exert an influence for the proper attitude towards the law and society?

The men in charge have not the time or energy to devote themselves to the moral regeneration of those criminals who might be affected by personal contact with those in charge of them. Instead, the prison authorities have endeavored to reform them wholesale. That is impossible with delinquents, as has been shown by those institutions that have had such signal success in the reformation of young offenders. Wherever juvenile probation or a juvenile institution has been successful in correcting delinquents, those in charge have had time and the will to give individual attention to the offenders.⁸⁸

Most of our penal and correctional institutions have large numbers of inmates, often mixed rather indiscriminately together—hardened offenders, those who have committed their first offense, those with first-class ability, and those with low intelligence. If the institution is to play its part in returning the inmates to society better prepared to play their proper part, from experience it seems that the following should characterize them: (1) So far as possible enough institutions should be provided to enable classification by institutions. (2) The officers should be chosen for their ability to understand and to influence for social ends those in their charge. (3) There should be enough officers, with special qualifications—psychologists, psychiatrists, social workers, physicians, and so on—in order that the problem cases may be studied and treated in accordance with their peculiar conditions; and thus the treatment will be individualized rather than *en masse*. (4) The institution should be only one part in a total plan of treatment of the offender. It should receive only those who cannot safely be placed on probation. It should prepare its inmates for release on parole or for discharge. Among these four things the character of the personnel is most important.

Supplements to the Correctional Institution. The correctional institution cannot successfully operate in a social vacuum. Experience has shown that it needs supplementary agencies to undertake the reintroduction of its products into the stream of free society. Just as the school needs an agency, either within the school system or supplementary to it, to connect the graduate with employment and guidance, so the prison and reformatory should have some agency to help the “graduate” get established when he leaves its walls. One such agency has already been developed, parole. This agency will be discussed later. At present in most

⁸⁸ Drucker and Hexter, *Children Astray* (Boston, 1923).

countries the discharged convict is dismissed at the gate without any agency ready to help him with his many problems, except a private society that with limited facilities offers what help it can give. Often he knows nothing about it. It has in many cases not made contact with him before he leaves the institution and is generally located in some city distant from the institution.

After-Care of Discharged Prisoners. In England and Wales after-care of discharged prisoners is provided for much more efficiently than in the United States. There are a number of private associations organized into a central association. The government subsidizes these organizations. They provide prison visitors who make contact with the men about to be discharged and assist them in various ways until they have reestablished themselves in society. The Borstal institutions have a special private organization to care for youths discharged from them.³⁹

From the beginning of American prisons there were private organizations devoted in part to aiding discharged prisoners. Perhaps the oldest of these was the Philadelphia Society for Assisting Distressed Prisoners, founded just before the Revolution. It was succeeded by the Philadelphia Society for alleviating the Miseries of Public Prisons, which in turn has been followed by the Pennsylvania Prison Society, still functioning and perhaps leading the way together with the Prison Association of New York in adapting their work with discharged prisoners to the demands of modern science in the handling of human personalities. In a number of states there are such private organizations.

Of national organizations dealing with discharged prisoners there seemed to be only seven in 1943. These were the Central Howard Association, the National Prisoners' Aid Association, the National Society for the Friendless, the Osborne Association, the Pathfinders of America, the Salvation Army, and the Volunteers of America.⁴⁰ The second and third named above are organizations of state and local societies. Doubtless all these do some good, but it is quite clear that the number is quite inadequate to meet the need. A number of them are working according to the old charity notions without providing trained workers to get at the real needs of their clients. Good? Yes, but not good enough.

Why should not the public agencies dealing with prisoners handle the discharged prisoner? The ideal method, of course, would be to have no inmate of a correctional institution discharged except on parole. As a matter of fact, an increasing number of prisoners are being so discharged. But there is always a large proportion of the inmates of any penal or correctional institution whom the parole authorities do not wish to risk

³⁹ Gillin, *Taming the Criminal*, p. 241; Barman, *The English Borstal System* (London, 1934), Ch. XI; Healy and Alper, *Criminal Youth and the Borstal System* (New York, 1941), Ch. XIV; Ruggles-Brise, *The English Prison System* (London, 1922), Ch. XIV; Barnes and Teeters, *New Horizons in Criminology* (New York, 1943), Ch. 33.

⁴⁰ See list in *Index of Social Work Year Book, 1943* (New York, 1943), "Adult Offenders."

on parole; or they are ineligible; or their sentences are too short to warrant parole. These are a responsibility of society. Their rehabilitation should not be left to the well-meant, sometimes effective, but often inadequate efforts of the private agencies. If the state had an agency similar to the parole agency to look after these ex-prisoners, perhaps the number of repeaters might be reduced. Until we get an actual indefinite sentence, or an indeterminate sentence of from one year to life, with eligibility to parole at such time as the parole board thinks proper, we cannot handle the discharged prisoner under the parole authorities.

QUESTIONS AND EXERCISES

1. What are the reasons back of the deprivation or limitation of mail privileges and visits from relatives and friends?
2. Suggest how a prison chaplain could be of real service to the inmates, in addition to his ordinary religious ministrations.
3. What objectives should prison education have?
4. Name six books you would not place in a prison library. Why?
5. What newspapers and magazines would you not allow in a prison? Why?
6. If you were a warden of a prison, would you introduce self-government? Why?
7. What is the relation between a classification committee and individualization of treatment?
8. Why does a prison or reformatory need psychologists, psychiatrists, and case workers on the staff?
9. What are the difficulties with the present system of after-care of discharged prisoners?

Chapter XXVIII

RESULTS OF THE PRISON SYSTEM

Let us now turn to a frank examination of the results of the prison system. Changes looking to its improvement have been made during the 125 or more years of its history. Some of the most important of these changes we have discussed. It does succeed in keeping fairly securely those who are sent to it. In a certain per cent of the cases the inmates come out with a determination to live a new life. Possibly, also, fear of prison acts as a deterrent in some cases. Nevertheless, in spite of these improvements the impression is quite general that in many respects the prison fails. What are some of the charges against the prison system?

CHARGES AGAINST THE PRISON SYSTEM

1. It has been charged that the very structure of large numbers of our prisons is such that *physical degeneration* is inevitable. The cell houses in many of them are great aggregates of caves. Those who dwell in them might well be called "cave-dwellers." The cells are small: in most of the old prisons, seven feet by three or three and one half feet, and six and one half or seven feet high. The old prisons, built as they were of solid stone, had a tendency to gather upon their surfaces dust and moisture. As a consequence, rheumatism and tuberculosis were very common. In most of our prisons the cell block does not permit of flooding the cells on one side with sunlight. Enlarged windows in the outside wall of the cell house and improved ventilation and sanitary systems have been installed in some of the older prisons and are characteristic of the newer. Nevertheless, in many of our older prisons the conditions in the building are very inimical to health.

Again, since so many of these men come into the prison physically diseased, it is important that the utmost care be taken in their close association that disease is not spread. In many of our prisons, however, elementary precautions against the spread of disease are lacking. In the newer prisons and reformatories the cell walls are built of steel and painted. These surfaces can easily be cleaned. Ventilation and heating provide a uniform temperature throughout the cell block in winter and a circulation of fresh air. But, while it is well recognized that for men shut up in small cells sanitary conveniences are of the utmost importance to preserve health, some of our prisons still rely upon the old bucket

system, which not only violates these fundamental principles of sanitation but corrupts the very atmosphere the men breathe.

Finally, with so many of the men diseased when they come in and with the unusual health hazards incident to the particular structure and the poor sanitation and ventilation, it is important that the prison be equipped with a first-class hospital. In most of our prisons the hospital is unworthy of the name. It is small, poorly equipped, and manned by not the highest class of physicians and surgeons. Under such conditions it is inevitable that physical deterioration should result. Add to this the fact of individual isolation, with the lack of all the cheering surroundings that so intimately affect the health of human beings, and you have an institution that could hardly be better devised to ensure the physical deterioration of those who have not the toughest constitutions. Promising beginnings have been made recently to remedy these defects.¹

2. Closely connected with these physical circumstances that affect the health of men is the *prison diet*. That nutrition has a great deal to do with both the health and the management of the inmate is recognized in some of our prisons and lies at the basis of the Borstal Reformatory system in use in England. When they enter prison, many prisoners are physically run down and nervously unstable. These conditions are accentuated by improper diet. This has been recognized in dealing with men on ship-board and in army camps. Insubordination, it has been discovered, is much less likely with men well fed upon properly balanced rations.

An ex-convict has written me concerning this matter as follows:

It happens that the Steward has more to do with the contentment of the men than any other individual. It is his duty to regulate the food supply, and he has the opportunity three times daily to bring content or discontent to the men. The men at W. were fed at a daily per capita of from Twelve to Thirteen Cents. Naturally, at this figure, there is a very slight margin between getting barely enough to eat and going hungry. Upon investigation we would probably find that more rioting has been caused in institutions from poor food than from any other reason.

Here again, while much remains to be done in most prisons, very promising changes have occurred in a number. Not only is there the beginning of attention to scientific dietetics in the feeding of the prisoners, but a number of the newer institutions are experimenting with the cafeteria plan rather than the uniform meal.²

3. With this class of men, most of whom have lived an irregular sexual life before entrance and have loose moral ideals, there is bound to be a great deal of *immorality*, even under the best conditions. But closely confine such men and there is bound to be an enormous increase in vice.

¹ Rector, *Health and Medical Conditions in American Prisons* (New York, 1929), pp. 29-101; National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole* (Washington, D. C., June 23, 1931), pp. 15-18.

² Rector, *op. cit.*, pp. 110-136.

Wherever there is a community of men without families, whether it be in the prison, in the navy, or in barracks of the army, many "unnatural" acts manifest themselves.³

Subject men to such conditions and if they have ever known the false solace of *drugs*, they crave them as never before. Consequently the prison authorities are always engaged in a terrific struggle to control unnatural vice and the use of drugs. Oscar Wilde, the poet, who had some prison experience, has put this indictment in poetic form concerning Reading Gaol:

Each narrow cell in which we dwell
Is a foul and dark latrine,
And the fetid breath of living Death
Chokes up each grated screen,
And all, but Lust, is turned to dust
In Humanity's machine.

4. Except for a short time during the early history of the Auburn system, when very severe methods were used to increase efficiency in production, the prisons have been until recently *ill organized and inefficient in their labor system*. There are lacking even the incentives of the outside world to honest labor. The listlessness and indifference are in striking contrast to the attitude in factories on the outside. In order to keep the men employed an extremely large number are assigned to every activity where it is possible. Recent prison labor legislation instigated by private employers and labor-unions has not helped the situation.⁴

5. It has been charged that *the enforcement of silence prevents the training of the inmates for social life and arouses intense antagonism*. Sociology has shown that speech is one of the most important achievements of humanity. Originating in the early days as a means of preventing the corruption of young criminals by the more hardened, the prohibition of conversation now serves chiefly as a provocative to violation of the rules, with consequent punishment for a faculty that the men believe to be an inherent right, and an incitement to a spirit of revenge and hatefulness. As a matter of fact the rule of silence does not prevent communication by the prisoners. The old-line prison official believes that the rule of silence prevents quarreling and fights. However, it is probable that the rule of silence generates irritability and provokes conflict. If the aim of a correctional institution is to prepare men for association in free life, should not one of the functions be to train men to converse in ways to promote good relations? It has been said that half the punishments in some of our prisons are for violating the rule of silence, and yet, strangely

³ Fishman, *Sex in Prison* (New York, 1934), Ch. VIII; Pollens, *The Sex Criminal* (New York, 1938), Ch. 12; Lawes, *Invisible Stripes* (New York, 1938), pp. 152-54; Nelson, *Prison Days and Nights*, Ch. VI.

⁴ *Attorney General's Survey of Release Procedures*, Vol. V, *Prisons* (Washington, D. C., 1939), Ch. II, especially p. 61, where it is shown that in 1936-1937 of the 137,000 prisoners in the United States 55,000 had no work at all.



enough, for this breach of discipline men are sent to the solitary, the only place in some prisons where they are free to talk with impunity.⁵

6. The regular system of life in the prisons often leads to a maddening *monotony*. The same routine is gone through with day after day, month after month, and year after year. It is a well-known principle of psychology that one of the most fatiguing experiences of life is the monotony that comes from the repetition of a routine program. In many of our prisons there is practically nothing to break this monotony unless there is a fight or an outbreak against the prison authorities. Where this monotony has been broken up by recreation, education, and conversation under careful regulation, the strain seems to be somewhat relieved.

7. The *spy system* used in almost every prison defeats all the purposes of reformation. In practically every prison under the old repressive system, certain prisoners are picked out because of their compliance and subservience to the officials to serve as "stool-pigeons." They are given special privileges, in return for which they report any plots or conspiracies to circumvent the prison officials. Furthermore, since the old repressive system fixes a wide gulf between the prison official and the prisoner, the former must have some means whereby he may know what is going on. The consequence is that the whole inmate body is shot through with suspicion; they do not know who are their friends and who may be informers. Furthermore, these stool-pigeons, since they have the ear of the officials, can become the most pernicious tyrants in the institution. They can take revenge upon any other prisoners by whispering in the ear of the official charges against a fellow-prisoner which are entirely untrue. These spies can even plant contraband articles or weapons in another inmate's cell without his knowledge and then report the matter to the official. While the man reported may be entirely innocent, he may suffer just as severely as though he were guilty.

8. In spite of the abolition of many types of severe punishment, *brutality*, though often refined brutality, still reigns. Result: in such an unnatural state of living, with the tremendous repression of normal impulses, the nervous condition of many of the men becomes alarming. With a policy of repression hatred, fear, and nervousness develops in both inmates and officers. There is no camaraderie. Unless the officials are adept in managing their men, they will resort to brutality.

9. *Instead of preparing the inmate for a life of responsibility and initiative, the prison system thwarts him.* He is expected to do exactly as he is taught, without reasoning why or asking questions. How can any one develop highly socialized qualities in the prison if he is never given an opportunity to exercise them? No wonder the men go out with whatever faculties they may have for self-control, initiative, and resourcefulness to meet the problems of life entirely undeveloped if not actually deadened. The theory of the prison system seems to be that the inmate will learn by

⁵ Osborne, *Society and Prisons* (New Haven, Conn., 1916), p. 146.

habit to live a proper social life without any motives except those of fear of punishment. If that is the motive upon which we depend in our prisons for the development of the social qualities, how can we be surprised if large numbers of these men, kept in such institutions, find it impossible to order their conduct in accordance with the demands of a free society? It is like the theory once regnant in political science, that the way to train people for liberty was to oppress them and not allow them to exercise political functions.⁶

10. *Failure to reform* is another charge against the prison system. The figures we gave in Chapter III indicated that probably over half of the inmates of our prisons and reformatories were recidivists. The FBI reported that in 1943 of 490,764 arrests reported to it 47.7 per cent already had records in the fingerprints of that organization: 51.1 per cent of the males and 29.8 per cent of the females.

In England in 1920 and 1921, 54.4 per cent of the male prisoners had been sentenced before.⁷ In Germany in 1929, 29 per cent of the prisoners sentenced were recidivists.⁸

It is quite possible, of course, that no institution could reform some of these men. In part they are the victims of their inheritance and of the vicious habits they have acquired in a long experience of neglected childhood and youth. It is quite certain, however, that for many of them prison has confirmed them in their delinquent tendencies. As Dr. Healy has remarked, "If absolutely innocent individuals were put under prison conditions they would tend to develop anti-social conceptions of conduct."⁹ When one considers the idleness, the repression, the overcrowding, the intermingling of all classes and ages of criminals in the prisons, the low capacity of the guards to influence the behavior of the inmates, the mass treatment, rather than individualization, characteristic of most prisons and reformatories, the lack of incentive to cultivate a new attitude towards life in free society, and the unnatural life led by convicts in most institutions, is it any wonder that so large a percentage go out only to return? Add to this the attitude of free society towards the ex-convict, and you have a conspiracy admirably fitted to prevent reformation.

11. *In many cases it results in mental deterioration.* The prison system seems to develop *insanity* to an unusual degree. In English prisons the ratio of insanity among prisoners classified as mentally sound on reception is about three times that prevailing in the general population. Taking the convict prisons alone into consideration, the ratio is thirteen times as great as in the general population. Furthermore, the insanity rate seems to increase with the length of sentence in the English experience.

While these facts may be explained on the basis of the greater mental

⁶ *Ibid.*, pp. 140-152.

⁷ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p. 12.

⁸ *Kriminalstatistik für das Jahr 1929*, Statistik des Deutschen Reichs, Band 398 (Berlin, 1932), p. 6.

⁹ Healy, *The Individual Delinquent* (Boston, 1915), p. 315.

unsoundness of those who come into the prison as compared with the general population, a careful analysis of the figures seems to indicate that imprisonment itself "is in a large measure responsible for the development of insanity." ¹⁰

12. *Prison life results in social deterioration.* After the first shock, when the ordinary prisoner, incarcerated for the first time, is reduced to a softened and responsive state of mind, open to either good or bad influences, the present prison system usually simply hardens him. In this state he needs sympathy and understanding and an endeavor to help him, but he finds brutality and harshness. Says one of the English prisoners: ¹¹

Just at a time when one is feeling crushed by a consciousness of guilt and weighed down by a sense of degradation, a stony-hearted, thick-headed warder comes along and, in threatening language, insists upon the strict observance of a set of childish regulations, which have no aim except to degrade the human into a beast. A few kind words (not petting), some humanity, would often send prisoners back into the world enlightened, repentant, and well-intentioned, instead of urepentant, savage beasts of prey.

The result is that the new prisoner finds comfort in the inmates of the prison. Say Hobhouse and Brockway: ¹²

The criminal gregarious spirit is in part, at any rate, a measure of self-protection against the nervous disorders which would result from a literal obedience to the regulations prohibiting conversation and intercourse.

An inmate of the United States Penitentiary at Atlanta writes: ¹³

I know that prisons are wrong because it is self-manifest that were society to attempt to devise a process for the development of the criminal personality; were society to attempt to perfect curricula for the dissemination of anti-social attitudes; were society to attempt to create institutions for the mass production of criminals; then no finer nor no more effective agency for the attainment of these aims could have been evolved than the prison.

This is no attempt to rejuvenate the corny old chestnut about older prisoners teaching the younger ones technique toward the more effectual penetration of strong-boxes and recipes for the outwitting of the gendarmerie. Such phenomena serves only for the theses of the more junior penologists and viewers-with-alarm in the ranks of the earnestly public-spirited but sadly misinformed committees for the study and improvement of this and that. The so-called apprentices of crime, the moppets of the mob, as it were, in whose tender behalf the sociologically alert seek segregation, are invariably better informed as to techniques and procedures than the older, "more hardened" offenders who are hypothetically so contaminatory. As Hugh D'Autremont put it some years back, the oldsters, somewhat horrified by the nature of the confidences and advices emanating from the incoming younger generation, would probably appreciate the protection of some sort of segregation themselves.

It is not the possibility of a non-legitimate vocational training that makes the

¹⁰ Hobhouse and Brockway, *op. cit.*, pp. 534-549.

¹¹ *Ibid.*, p. 506.

¹² *Ibid.*, p. 507.

¹³ *The Atlantian*, July-Aug., 1941, pp. 27, 48.

prison a man-perverting agency of great power and efficiency. It is the doleful fact that some nebulous something happens to a man between the time that he checks into and checks out of prison; some inculcation of the essence of bitterness and social antagonism, an inculcation that is not merely a veneering process but a deep inoculation. And this "something" spawns a man who is invariably less desirable as a citizen than he was even at the time that he stood before the bar of justice.

13. *Suicide in prisons* forms another problem. In the English prisons the ratio of suicide in the prison population exceeds that in the general population by a greater difference than that between the ratio of insanity within to that outside. Goring's study of the English convict showed this clearly.¹⁴ Goring, as well as Hobhouse and Brockway, is of the opinion that the prison affords the environmental conditions that stimulate this aggravated tendency to self-murder.

The following case of a prison suicide described by an eye-witness, shows the significant factors in English prison life of that date that led to suicide.¹⁵

A brutal taskmaster for several days had bullied this prisoner for not completing his task. He climaxed the matter by threatening to report the prisoner for idleness, which would have meant punishment. The prisoner, exasperated to the point of desperation, turned on the taskmaster and knocked him down, clutched him by the throat. The latter broke loose, slammed the door of the cell and went away to report. The prisoner realized that to attack an officer meant the "cat o' nine tails," in addition to days of solitary confinement on bread and water with the denial of all privileges. He had been in prison many times before and he knew what punishment his act entailed. In desperation he ran to the highest tier of cells, tore loose the netting placed there to prevent inmates from throwing themselves down and jumped head foremost. He died in two days.

GOOD RESULTS

This survey seems to present a sad and hopeless picture. Are there no good results of the present prison system? What is the best that can be said of it? Are we so devoid of rationality that in spite of all these charges against a social institution we still retain it? No. There are some excuses for its continuance.

1. One of the foremost reasons for continuing the prison system is that *it is easy to operate*. The present prison system requires less trouble to us all than any other system so far suggested. A man menaces the welfare of ourselves or our property. Here is an institution to which we can send him and forget about him. For the time being we have eliminated him from society. The emotional stress to which he has subjected us has been relieved by a measure of revenge, and by getting rid of his presence. It is the simplest thing to do. While it costs society much money, and while often it sends him back to society with seven other devils more wicked

¹⁴ *The English Convict: A Statistical Study* (London, 1913), p. 556; Abridged Edition (1919), p. 152.

¹⁵ Hobhouse and Brockway, *op. cit.*, pp. 556-557.

than himself to torment us again, for the moment it has satisfied us. It saves us the trouble of taking the slow and toilsome path of changing his habits by troublesome methods of individual regeneration or of painfully changing the conditions that made him what he is. Since human beings try the seemingly easiest way until they find by experience that the apparently harder way leads to better results, we continue the prisons because we do not want to take the trouble of finding a better way. It accords with the inherent laziness of humanity. It is easy to operate.

2. *It provides a few of the inmates a vocational training.* As we have seen, most of the prisoners are unskilled laborers. The prisons and reformatories provide a few with opportunities to learn a trade. But the number is so small and the sentences for most so short that for most of the inmates vocational training is only a euphemism. If the problem of prison labor is ever solved, more of the prisoners will get some vocational training.

3. *The prison system is improving.* In spite of the many charges against the prison system of to-day, there are certain promising happenings in connection with it. Once again, as in the early years and in the 1870's experimentation is going on. These various ventures in the attempt to make the prison system better suited to the task of preparing men for free society, while still halting and not employed at all in many states, nevertheless give promise of a new system of treating delinquents. Some of these experiments have been cited in the previous chapter. The silent system is slowly dying. Even within the last twenty years I have seen it entirely pass away in some prisons and being distinctly modified in others. The day is not far away when it will entirely disappear.

It is becoming recognized that it is possible to have institutions of varying security. No longer are they all of bastille-like appearance. Even within an old prison there is a tendency to take a considerable number of the inmates from within the walls and place them in prison camps or on public works in the open. Apart from this development, however, new institutions such as the one at Norfolk, Mass., with its system of cottages adapted to differential treatment of the various groups, the wall-less intermediate prison at Argola, Mo., Wallkill prison in New York, the institutions near Hamburg, Germany, represented by that at Glasmere in 1932, and the Russian industrial and agricultural correctional colonies are attempts to treat the prisoners under less repressive discipline and with greater freedom.

Even within the prisons for most of the prisoners amelioration of conditions has been introduced through recreational plans, educational activities, and group work. The classification committee is a device for adjusting the prison régime to the needs of each prisoner.

WHY ARE WE NOT PROUD OF THE
PRISON SYSTEM?

Nothing so plainly shows how little we have applied the findings of modern science to the problems of human behavior and the absence of the experimental method in dealing with our social misfits as the continuance of the repressive prison system. We continue the system because we have not seen that a portion of the prisoners need to be treated as defectives and mentally abnormal beings, other prisoners need to be treated as men who can be trained for useful life, and still others must be held for life as incorrigible criminals. We do not appreciate that we could stop the making of criminals if we attacked the conditions in the human stock and in the organization of social life that produce these antisocial personalities.

The results of our survey of the prison system both in this country and abroad are not such as to make us enthusiastic concerning the system. If we are to succeed in turning back to society larger numbers of our prisoners, we must seriously modify it. It has been declared that the system must be destroyed. Certainly as it exists in many countries to-day it must go. In the light of the hopes of the early prison reformers it has miserably failed. In the face of the social progress of the last hundred years—the progress in educational methods, in knowledge of human psychology and social relations, in methods of teaching students in our schools, in methods of character formation in children, and in knowledge of the roots of social conduct—the prison system stands out as an anachronism and an abomination. The way we treat our criminals insults our social intelligence, outrages our humanitarian sentiments, challenges our religion, and flouts our advances in science and education. The prison stands as one of the most prominent survivals of cultural medievalism. We take pride in our science, in the socialization of our religion and our schools. Our economic progress, our material advancement, and our cultural development challenge the admiration of the world. Why are we not equally proud of our prisons? It is hopeful that when the facts concerning them are laid bare to our eyes, we hang our heads in shame. Why do we not mention our prisons in the same breath with our hospitals? May we not hope that a people who have attacked the once seemingly impossible task of curing disease with so much success may yet find a solution for the vexed problem of so treating warped lives that they shall find the joy of healthy social life? Perhaps when we bring to this problem the industry, the patient search for causative factors, and the ingenuity in adapting means to ends that characterize the history of medicine, we shall find a way to end this disgraceful institution, which more than any other illustrates not only "man's inhumanity to man" but also his indifference and ignorance. It is conceivable that we may learn in time to prevent crime and so come to the happy state where we shall not need

correctional institutions. If so, they will vanish like such outworn devices as the bow and arrow, the breastplate, and the stone hatchet. Until that time comes, we need to address ourselves so to modifying our methods of handling the delinquent that we may see more results for our trouble.

QUESTIONS AND EXERCISES

1. If the prison system was protecting society from criminals but not paying its way or reforming them, would it be socially justified? Why?
2. If it was reforming men but not paying its cost, would it be open to reasonable criticism? Why?
3. If the prison was turning back profits to the state but was not reforming them and was turning them out again into society, would you criticize it? Why?
4. Suggest how the prison could be managed so that the present criticisms would not hold.

Chapter XXIX

JAILS, WORKHOUSES, AND HOUSES OF CORRECTION

The jails, workhouses, houses of correction and lockups in this country are outgrowths of institutions of varied origin.

By a jail in the United States we mean usually a county jail. It is used as a place of detention for persons accused of crime who cannot, or who are not permitted by law or by judicial determination to, furnish bail for appearance at trial; as a place to which are committed those sentenced to pay a fine but who cannot, or will not, do so; and as a place of punishment for misdemeanants with short sentences, in some states, and also for felons with short sentences. It grew out of the English gaol, imported to this country by the English colonists.

The workhouse originated in England as a place to which were sent sturdy vagrants who were work-shy. Gradually it came to be used in some places in England as a place to which the judges sentenced misdemeanants, since it provided work, and the gaol (the original English term for jail) did not. In this country it was set up as a special institution for those sentenced to short terms, usually in the larger centers of population, in order to relieve the jails of sentenced prisoners and thus keep the jails for those awaiting judicial disposition.

The houses of correction in this country were also borrowed from the English institutions of that name. In England they were set up in some places in imitation of similar institutions found by John Howard on the Continent. In this country they are equivalent to the English workhouse.

Lockups are municipal institutions used by the police for the temporary detention of those arrested until they can be taken to court, and in some places until their cases are disposed of by the court.

The jail is the primordial penal institution out of which have grown prisons, penitentiaries, and reformatories, as well as houses of correction and other devices for handling delinquents. It has not received the attention that its importance deserves. There are many more jails than all other penal institutions combined. Many more people experience them than all others.¹ Yet it is the most neglected of our penal and correctional institutions.

¹ The Bureau of the Census estimated that in the first six months of 1933, 304,242 persons were received for imprisonment in the county and municipal jails of this country. *County and City Jails: 1933*, Bureau of the Census (Washington, D. C., 1935), p. 1. There are no data on the number detained in jails and lockups.

How the Jails Arose. The origin of the jail is lost in the mists of antiquity. When first it appears it is an institution for the detention of those accused of crime or those awaiting execution. Only since the earlier methods of punishment—for instance, the stocks, the pillory, whipping, mutilation, beheading, and so on—were abolished has the jail become a place for the punishment of wrong-doers.²

The "common jail" seems to have existed in England as early as the sixteenth century. It has been estimated that then something like two hundred such jails were in existence, maintained by many different authorities. In theory they were the property of the king; and county sheriffs, officers of the king, were in charge of them. Theoretically jails at that time were still places of detention only. When first we catch a glimpse of them they were not supported by the public funds but were carried on as private profit-making concerns. In England they were farmed out to the jailer as late as 1730. The jailer made his money by fees that he charged the prisoner. Everything he did from turning the key to let in the arrested man to providing heat, bedding, and furniture, and even to turning the key to let him out, had a fee attached to it that the jailer pocketed. While this vicious system has gradually been displaced, it still survives in the sheriff's fees of our day and the fees for feeding the prisoners in the county jails still to be found in many states. In this situation the most terrible abuses arose. In fact, these were the abuses that led to John Howard's important work in prison reform.³

Origin in America. Like many others of our institutions county jails were brought to America by the colonists from England. The colonial governments found it necessary to provide places of detention, which gradually, as in England, with the disappearance of the numerous other forms of punishment developed into places of punishment by imprisonment.⁴

Klein says that in New York Colony there was no law providing for imprisonment as a punishment before 1664. For the next century there are found only four such laws. The first general law in New York designating prisons as places of punishment was enacted in 1788 and applied only to minor offenses.⁵ With the growth of population in other parts of the country the jail was established and in the larger centers became a large institution holding an indiscriminate mob of misdemeanants, felons, debtors, and persons awaiting trial.⁶ These became dens of iniquity,

² Webb, *English Prisons under Local Government* (London, 1922), pp. 1, 2. The first documentary mention of the jail seems to be in the *Assizes of Clarendon* issued by Henry II of England in 1166. But the language seems to imply that in some counties jails already existed. See Henderson, *Select Documents of the Middle Ages* (London, 1903), p. 17.

³ Webb, *op. cit.*, pp. 3-12.

⁴ Lewis, *Development of American Prisons and Prison Customs, 1776-1845* (Albany, N. Y., 1922), p. 271.

⁵ Klein, *Prison Methods in New York State* (New York, 1920), pp. 25, 26.

⁶ Lewis, *op. cit.*, p. 271.

the evils of which led to early efforts at prison reform. It was out of the Walnut Street jail in Philadelphia that the Eastern Penitentiary of Pennsylvania developed, and out of the Newgate jail in New York City came the Auburn State Prison of New York. But with the development of state prisons for felons, the jails continued as places for the imprisonment of minor offenders, as well as for detention of those awaiting trial. In the early 1830's De Beaumont and De Tocqueville found that the jails were unreformed.⁷ New York made an attempt (1846) to solve this problem by setting up county penitentiaries to care for those sentenced to short terms, thus ridding the jails of sentenced prisoners, and making them places of detention only.⁸ Such a plan was adopted in only a few counties of New York, and by only a few counties in other states.⁹

Development of the County Jail. In addition to these early attempts to reform the jail certain other developments have taken place in the course of a century. Among these must be noted the attempt to segregate within the jail those detained awaiting trial, juveniles, women, and to a slight extent the younger adults—attempts that were for the most part sporadic.

Furthermore, in most of the states idleness in the jails became a serious problem. The good-roads movement developed in the early part of this century. Consequently by 1923 every state in the Union had on its statute books laws providing for working county prisoners on the roads. However, it became a widespread practice only in the south.¹⁰ The result has been that chain- or road-gangs were taken out of the jails and put to work on the streets or leased out to private parties. In 1922, the last report, the United States Census reported the situation in the following table:¹¹

In a less degree than in the case of the prison, attempts have been made to work jail prisoners on farms and to develop some industries in the jails of some of the larger places to relieve idleness. Most of such attempts have occurred in connection with houses of correction and workhouses.

NUMBER AND FUNCTION OF JAILS

Number of Jails. There are over 3,500 county and city jails in the United States. About four-fifths of these are county jails or workhouses, chain-gangs, and stockades, while the remainder are municipal jails

⁷ De Beaumont and De Tocqueville, *The Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), pp. 13-15, 19.

⁸ Klein, *op. cit.*, p. 41.

⁹ Brockway, *Fifty Years of Prison Service* (New York, 1912), p. 49.

¹⁰ Steiner and Brown, *The North Carolina Chain Gang* (Chapel Hill, N. C., 1927), pp. 3, 4.

¹¹ "Table 7—Prisoners in Chain or Road Gangs in 'Other' Institutions Distributed According to Sex, by Divisions and States, July 1, 1922," *Number of Prisoners in Penal Institutions, 1922 and 1917*, Bureau of the Census (Washington, D. C., 1923), p. 19.

and workhouses.¹² In addition there are over 10,000 jails, lockups, and police stations in this country.¹³

CHAIN- OR ROAD-GANGS

Section	Number of Gangs Reporting	Number of Prisoners		
		Total	Male	Female
South Atlantic	230	10,819	10,450	369
North Carolina	51	2,247	2,242	5
South Carolina	41	1,527	1,527	...
Georgia	100	6,191 *	5,849 *	342 *
Florida	35	854	832	22
East South Central	40	1,679	1,556	123
Tennessee	13	639	587	52
Alabama	15	832	766	66
Mississippi	12	208	203	5
West South Central	26	219	216	3
Arkansas	2	18	18	...
Louisiana	8	66	64	2
Texas	16	135	134	1

* Includes 394 males and 193 females on Georgia State Prison Farm operated in connection with chain- or road-gangs.

Who Is Sent to the Jail? Of the persons committed to penal institutions in the United States in the first six months of 1933, 81 per cent were sent to jails and workhouses. Of this number 94.8 per cent were committed for less than one year. If, then, the jail is the institution with which more men are acquainted than any other, should we not be concerned that its influence be wholesome rather than baleful?

Of those sent to jails and workhouses in the first six months of 1933, 31.4 per cent were committed for non-payment of fine. In short, almost one-third of the inmates were *prisoners for debt* to the court.¹⁴

What is the age, offense, and sex of the jail inmates? In the first half of 1933, of those committed to jails and workhouses in the United States 10.7 per cent were under twenty-one years of age. In the same period, about 73 per cent of the inmates were charged chiefly with vagrancy, disorderly conduct and drunkenness, larceny, including auto theft and

¹² *Prisoners: 1923*, Bureau of the Census (Washington, D. C., 1926), p. 3; Bureau of the Census, newspaper release for Sept. 11, 1934.

¹³ *Literary Digest*, Aug. 11, 1923, p. 34; Hart, "Police Jails and Village Lockups," National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole* (Washington, D. C., June 23, 1931), pp. 327 ff.

¹⁴ In some places the proportion is much greater. See Stern, "Imprisonment for the Non-Payment of Fines in Chicago," *The Social Service Review*, Sept., 1931, pp. 459 ff. In 1933 for the whole United States the proportion had fallen from half of the commitments to less than a third sent to jail for non-payment of fine. Later figures do not discriminate between those serving jail sentences and those in jail awaiting trial or sentence.

stolen property, violation of liquor laws, violation of traffic and motor vehicle laws, and assault. Women constituted only about 7 per cent of those committed. A large per cent were repeaters (58.5 per cent).¹⁵ Already demoralized after one or two such sentences, they are evil influences on the young first offender and foci of corruptions to all with whom they meet.¹⁶ In spite of the fact that commitment to jail has had no deterrent effect on them, the laws sends them back again and again with no result but further demoralization to themselves and corruption of others.¹⁷

What was the mental condition of the jail inmates? In Wisconsin in 1920 55.4 per cent were normal, 16.4 per cent feeble-minded, and 15.2 per cent psychopathic.¹⁸

The general picture, then, of the population of a jail indicates *its actual functions*. The jail can be described as an institution in American life that functions chiefly as (1) *a place of detention for those awaiting trial*, (2) *a place of punishment for those who have been sentenced to a fine and are unable to pay*, and (3) *a place for the punishment of minor offenders for whom no other place is provided*. It is clear that as long as these various functions are provided for in the same institution, usually a small one, proper segregation cannot take place. It is impossible for the jail properly to discharge its three distinctive functions. It is imperative, therefore, if injustice is not to be done, that *the jail should be a place of detention only*.

FAILURE OF THE JAIL

Certain evils of jails in the early days have been referred to in the chapter on prisons. The reports of several early organizations reveal the jail conditions of that period. For example, the Boston Prison Discipline Society, organized in 1825, called attention in its first annual report to the terrible conditions in county jails.¹⁹ Among these conditions were: insecurity, lack of light and ventilation, overcrowding, lack of heat in winter, insufferable heat in summer, commingling of convicted criminals and those awaiting trial, filthiness, lack of clothing, housing of sick and well together, necessity of sleeping on damp floors, mingling of children with adults, placing of first offenders with the habitual and depraved, commingling of insane and sane, drunkenness, obscenity, and lasciviousness among the inmates, neglect of the inmates by the keeper, scanty and poorly prepared food, the fee system as the basis of payment of the keeper, control by petty politicians, and idleness.²⁰

¹⁵ For all the above figures see *County and City Jails: 1933*, Bureau of the Census (Washington, D. C., 1935).

¹⁶ Hoffer, Mann, and House, *The Jails of Virginia* (New York, 1933), pp. 5, 140.

¹⁷ *Ibid.*, pp. 363-365.

¹⁸ *Wisconsin Mental Deficiency Survey* (Madison, Wis., 1920), p. 17.

¹⁹ Lewis, *op. cit.*, p. 272.

²⁰ *Ibid.*, p. 273; Carey, "Missouri Jail Survey" *Proceedings, 70th Annual Congress, American Prison Association* (New York, 1940), pp. 402-410; "Information Please," *ibid.*, pp. 423-440.

Ninety years later, reports concerning county jails had a significantly similar sound. Thus in Illinois in 1916 the *Institution Quarterly*, the official organ of the public charity service of Illinois, after describing the attempts of the legislature to improve the jails of that state, described the jails and jail system as a disgrace to humanity and civilization and charged that they were a powerful factor in the promotion of crime and degeneracy, that they were plague centers, and that men who passed through them left them with a contempt and hatred for the law that led them to even greater crimes. The report showed how the legal provisions for sanitary improvements and for separation of different classes of prisoners had been ignored and stated that not one-fifth of the county jails of that state conformed to the provisions of the state law and that many of them were operated with more violations of the law than had been committed by all the prisoners at that time confined in them. Speaking of the southern counties of the state this report said:²¹

Here we find the metal laundry tub with all its horrors. The tub is the only bathing convenience provided. In it men wash their bodies and their clothes. Sick men and healthy men bathe in it. Sometimes twenty men must use this one tub. The water must be carried to it for there is no water and sewage pipes in the jail. The bathwater must be heated on the jail stove. The common towel may be in use or three or four men may share one towel. The towels are washed, if washed at all, by the men.

This report stated that in Chicago were found the worst jails in the state. Of the forty-six jails of Chicago only about a dozen were fit for use. Of the police jails the report said:²²

These persons are declared by the law to be presumably innocent and they are herded together in vile cells exposed to every kind of moral and physical contagion. They are held in idleness. The first offenders are in cells with hardened criminals; boys are with old men; the girl witness may be in the same cell with the drunken woman of the streets; the runaway boy may be imprisoned with a sexual pervert; the physically clean are compelled to use the same tubs, often the same towels and drinking cups that are used by those suffering from the most loathsome communicable diseases. They may also use the same beds and bedding. Light and air are denied admission but vermin, rats, and seepage enter without difficulty.

Since that time some of these conditions have been changed for the better. Cook County has built one of the finest county jails in the country. That Illinois was not a sinner above many others is testified to by reports from many other states. The Pennsylvania Prison Society, which

²¹ *The Institution Quarterly, Illinois*, Vol. VII, Mar. 31, 1916.

²² *Ibid.*, p. 12. See also Kirchwey, *Reports Comprising the Survey of the Cook County Jail, The Chicago Community Trust* (Chicago, 1922); Loomis, "A Jail for More than Custody," *The Survey*, Apr. 15, 1929. Even as late as 1931 Hon. Alexander Patterson, Commissioner of Prisons for England and Wales, after visiting a good many jails in this country, said, "The average county jail retains many of the worst features of the European prisons of 1850." *Eighty-Seventh Annual Report of the Prison Association of New York, 1931*, Legislative Document, No. 110 (Albany, N. Y., 1932), p. 48.

for over one hundred years had worked for the improvement of prisons in that state, reported that the conditions there were very bad.²³

In 1912 a committee of which the chairman was the Attorney-General of the state reported at the request of the Governor on the jail system of Iowa. This report said:²⁴

Our jail system is a disgrace to the state and except as a place of detention for persons awaiting trial there is not a single excuse or justification for its existence.

Similar reports have come from all parts of the country.²⁵ That many of these conditions still characterize the county jails of the United States is shown by the report of the United States' Bureau of Prisons, which inspects these institutions in order to determine whether or not they are fit for the detention of persons held for the United States' district courts. In the fiscal year ending June 30, 1940, on the basis of ratings on ten factors considered necessary for federal prisoners, the findings were: 49.7 per cent poor, 47.8 fair, and 2.5 good.²⁶

These descriptions are not from the pens of sensational journalists but from official reports. They did not then, and do not now, fit all the jails in the United States, but they are still true of enough of them to show that American society has failed to reform this ancient institution. Let us now turn to specific aspects of failure.

²³ Votaw, "Review of the County Jails in Pennsylvania," Prologue to No. 59 of *The Journal of Prison Discipline and Philanthropy* (1920), p. 50, and detailed reports of each of the county institutions in the publication; *Report of the Legislative Commission on Jails: With a Special Study on the Jail Population of Connecticut* (State of Connecticut, May 5, 1932).

²⁴ *A Report Concerning the Jail System of Iowa, with Recommendations*, Department of Justice, State of Iowa (Des Moines, 1912), pp. 79, 81-83.

²⁵ For details in other parts of the country see Queen, *The Passing of the County Jail* (Menasha, Wis., 1920), pp. 16, 17; Fishman, *Crucibles of Crime* (New York, 1923), Chs. 2-4; Fishman, "The American Jail," *Atlantic Monthly*, Dec., 1922; "Jails in Georgia," *The Survey*, June 15, 1924; Riley, *Survey of Florida County Jails* (New York, Mar., 1922); Whitney, "The Alameda County Jail," *The Survey*, Dec., 23, 1920, p. 452; "Our Illinois Jails," *The City Club Bulletin* (Chicago, Jan. 29, 1917), p. 34 ff.; Falconer, *The Jail as a Perverter of Womanhood* (New York, Mar., 1922); Hart, *County Jails*, Prison Leaflets No. 40; National Committee on Prisons and Prison Labor (New York, 1917); Ellwood, *A Bulletin on the Condition of the County Jails of Missouri* (University of Missouri, June, 1904); *Penal Affairs*, Pennsylvania Committee on Penal Affairs (May, 1926); Lowden, Robinson, and others, *Propagating Crime through the Jail and Other Institutions for Short-Term Offenders*, a report submitted to the National Crime Commission (New York, undated); Robinson, "New Developments in Jails," *Proceedings, American Prison Association* (1933), pp. 90 ff; Barnes and Teeters, *New Horizons in Criminology* (New York, 1943), Ch. 35.

²⁶ *Federal Offenders: 1940, Bureau of Prisons* (Washington, D. C., 1941), pp. 15, 16. See also Bates, *Prisons and Beyond* (New York, 1936), Ch. III; Marie C—, "The Menace of the County Jail," *The Prison World*, Sept.-Oct., 1940, pp. 79, 80; Hill, "The County Jails of Maryland," *ibid.*, pp. 40-48; and numerous articles and addresses in *Proceedings, American Prison Association* for recent years and *Jail Association Journal*, now merged with *The Prison World*. The most important single book on jails is Robinson, *Jails: Care and Treatment of Misdemeanant Prisoners in the United States* (Philadelphia, 1944).

Jails as Disease Breeders. The lack of proper light and air, the unsanitary conditions prevailing in most jails, the common bathing tub—where one of any sort has been provided—the use of the common towel and drinking cup, and the presence in jails of many diseased prisoners all conduce to spread disease in these institutions. Of 152 persons examined in ten jails in Michigan some years ago, 27.6 per cent had active cases of tuberculosis or were suspected of having the disease or had had the disease and arrested it. This was much higher than the percentage in the general population. It contrasts with 3.4 per cent of 1,971 men examined in the three state penitentiaries of the same state.²⁷ In Connecticut in 1931 of 426 male inmates of the jails 13.6 per cent had or had had syphilis, and 27.7 per cent gave a history of gonorrhea.²⁸

The State Inspector of Jails in Alabama pointed out that a lack of occupation, no exercise, inadequate supply of wholesome food of sufficient variety, insufficient air, and deprivation of sunlight and outdoor life were putting the men in the jails in that state at the mercy of tuberculosis and other communicable diseases.²⁹ Since the jail population changes frequently, these persons are a menace to the people outside.

In practically every state a large proportion of the jails are so lacking in the fundamental decencies that they can be described as disgraces to our civilization.

Said a jail inspector for the federal government concerning the jails he had visited in the United States: ³⁰

If the facts were known, in most instances the sentence would actually read: "I not only sentence you to confinement for thirty days in a bare, narrow cell in a gloomy building, during which time you will be deprived of your family, friends, occupation, earning power, and all other human liberties and privileges, but in addition, I sentence you to a putrid mire, demoralizing to body, mind, and soul, where every rule of civilization is violated, where you are given every opportunity to deteriorate, but none to improve, and where your tendency to wrong-doing cannot be corrected, but only aggravated."

Said an inmate of a California jail:³¹

After each meal we washed our dishes in water drawn from the bathtub that might be hot or lukewarm, and without any thought of disinfecting. Any washing of clothes or dish towels had to be done in the same little galvanized tub without any opportunity for boiling. This and the bathtub used in common had mental disadvantages to a social worker, for many social workers such methods have been regarded as a menace these many years.

A report on the Florida jails in 1922 said:³²

²⁷ "Tuberculosis in Michigan Jails," *The Survey*, Jan. 27, 1917.

²⁸ Davis, *Report of the Legislative Commission on Jails*, p. 66.

²⁹ "County Jails Contrasted in Two States," *The Survey*, June 16, 1917, p. 262.

³⁰ Fishman, "The American Jail," p. 793.

³¹ Whitney, *op. cit.*, p. 453.

³² Riley, *op. cit.*, pp. 3, 4.

Prisoners are not forced to take a bath; only 8 counties of the 30 furnish prisoners with any underclothing; and in a great majority of cases prisoners have to do the washing. It is said that at Marianna the blankets are never washed, and clothing is never furnished to prisoners. At Starke blankets are washed twice a year; at Brooksville, only once a year. . . . In fact, only 13 jails studied supply sheets, and most of the blankets are washed, "when needed," by the prisoners, together with their clothes. This work, in the majority of cases, is done in the bath-tubs, except at Brooksville, Crestview, and Ocala, where they send the soiled bedclothes and clothing to the laundry once a week. In a large number of places mattresses are seldom, if ever, washed or renewed.

Martha Falconer says of the jails:³³

Many of the jails are in unsanitary condition; often filthy and infested with vermin. . . . In this workhouse, where men and women were sent from the city court, the women's quarters were filthy—not fit for any one to live in.

Every investigation made in recent years shows many jails that are incubators and spreaders of disease.

The Fee System. Another vicious characteristic of the modern jail is the fee system. This is a direct survival from the days of John Howard when the jails were the property of private individuals or, if they belonged to a county or municipality, the only pay the jailer got was from the fees that he was permitted to charge. Most of the old service fees have been abolished. The chief remnant of the fee system is to be found in the fees paid for the feeding of prisoners. A study in Pennsylvania estimated that the sixteen counties with a total of 1,600 prisoners paid \$20,000 a year less than it cost the fifty-one counties under the fee system, with only 766 prisoners.³⁴ Moreover the fee system meant poorer food for the prisoner.³⁵ This system still prevails in many states, although it is slowly disappearing.³⁶

Imprisonment for Debt. In 1923, 52.9 per cent of the inmates of the jails were those who had been sentenced to jail because of inability to pay a fine. What a travesty upon our boasted abolition of imprisonment for debt when we still imprison over one-sixth of a million people every year because they cannot pay what they owe to the court!

To solve this problem a number of states have enacted laws providing for the payment of fines on the instalment plan except in the cases in which it is believed the convicted person would default, with the result that from 1923 to 1933 the per cent committed for non-payment of fine was cut from one-half to less than a third. Under this system these who would otherwise be jail prisoners supported at the expense of the taxpayers are enabled to support their families, pay the fine, and relieve the taxpayers of their support.

³³ Falconer, *op. cit.*, pp. 3, 4. See also Lowden, Robinson, and others, *op. cit.*; Hoffer, Mann, and House, *op. cit.*, Ch. VI.

³⁴ "The High Cost of County Jail Fees," *The Survey*, Jan. 12, 1915, p. 423.

³⁵ Votaw, *op. cit.*, pp. 4, 5.

³⁶ For the working of the fee system in Virginia see Hoffer, Mann, and House, *op. cit.*, Ch. VII.

Jails Are Costly. There are over 3,000 county jails in the United States. In each of these institutions is invested a considerable sum of money. No one knows how much these jails cost the taxpayers of the United States. From what can be gathered from a few states, it must amount to an enormous sum. During the year ending May 1, 1922, in Wisconsin the jails cost the taxpayers of that state \$489,417.52 for operation. In Virginia in 1915 there was an aggregate of 26,384 prisoners costing the taxpayers a total of \$397,883.51.³⁷ Yet in 1923 the United States Census found that the average population of 2,719 jails was 11.

Jails Are Places of Idleness. It has long been recognized that labor is of the greatest importance for physical, mental, and moral health. Most of the jails in the United States, however, provide very little or no labor for the inmates.³⁸ Fishman has said that the great curse of jails is not the bad sanitary conditions, but idleness. Concerning the Cook County Jail at Chicago, one observer said:³⁹

At a conservative estimate, the value of the labor here wasted is, perhaps, between one-half million and a million a year. But economic loss through the mental, moral, and physical stagnation of the prisoners cannot be counted in dollars. It is incalculable. To look into these corridors and see the hundreds of well-set-up and able-bodied men lolling around doing nothing except exchanging stimulating details of criminal adventures and becoming more proficient in crime is enough to make one despair of any solution of the criminal problem while idleness continues.

This problem cannot be solved in the small county jail.

Lack of Discipline. The ordinary sheriff conceives it to be his business to keep the men in jail. Unless there is a fight or other disturbance they do much as they please. Out of the lack of discipline by the jail authorities there has developed an institution known as the "kangaroo court," which is a form of petty graft and a method of discipline conducted by the prisoners themselves. It has in it an idea that might be used to some good effect, but under the natural leadership developed in a group within the jail, it is quite likely to be a petty tyranny. This court acts as a means of extorting from newcomers money with which to buy food and luxuries not furnished them by the jail authorities.⁴⁰

On the whole, it must be said that there is very little, if any, whole-

³⁷ *Mental Defectives in Virginia*, State Board of Charities (Richmond, Va., 1915), p. 69.

³⁸ Votaw, *op. cit.*, p. 7.

³⁹ Fishman, "The American Jail," pp. 801, 802. For a more recent study depicting much the same conditions see Hoffer, Mann, and House, *op. cit.*, p. 139.

⁴⁰ Akers, "Fish! Fish!" *The Survey*, Oct. 1, 1923, pp. 29-32. The Board of State Charities of Indiana in a recent report condemns the kangaroo court in the jails of that state as follows: "From time to time we have learned of the practice of Kangaroo courts. This practice cannot be too severely condemned. The sheriff who permits it admits his inability to govern his prisoners. The practice can only lead to injustices, abuses and vice. The experienced prisoners prey upon the weak and inexperienced. A few simple rules properly enforced by the sheriff and his deputies are all that is necessary to maintain good standards of care and administration."

some discipline in a jail. Most jailers are incompetent to exercise any constructive social influence over the inmates; those who are competent soon come to feel that the task is hopeless because of the shortness of the sentence or the depraved character of the inmates. Discipline of a constructive nature is lacking in the institution where it would probably do the most good.

Jails Are Not Reformatory. As a result of the idleness, the mixing of various classes, and the lack of constructive discipline in the jails, they are not reformatory. We have an abundance of facts to show this. Every study of recidivism in connection with jails cries it aloud. In 1933, 58.5 per cent of those committed to jails and workhouses had been committed before.⁴¹ That this percentage is too low is indicated by studies in a number of workhouses and jails in different parts of the country.⁴² A study of 1,288 jail prisoners in thirty-four county jails of New York State found that 66 per cent had been arrested more than once. Sixty-four per cent of those arrested only once were mentally abnormal, while 90 per cent of those arrested four or more times were mentally abnormal.⁴³ What could better demonstrate the failure of this institution to prevent the repetition of a criminal act than these figures?

Jails Promote Demoralization. In most of the jails there is no attempt at classification of the inmates except on the basis of sex and in some on the basis of age. In many of the jails children may still be confined.⁴⁴

In many states this evil practice is decreasing owing to "the awakening on the part of the public and the committing magistrates to the injustice to the individual child and the danger to the state which may result from placing upon a boy or girl the stigma of having been confined in jail." Detention homes for the temporary commitment of juveniles, "boarding out" children awaiting court action, and release to parents or probation officer while awaiting trial are methods supplanting commitment to jail.⁴⁵

Insane people are still confined in some county jails.

Young and old, debauched and unsophisticated, diseased and healthy, sane and insane, the criminal long experienced in all the arts of crime and the young man detained for trial and having his first experience with the jail are all flung in together. The abandoned and diseased

⁴¹ *Prisoners: 1923*, p. 150. See Note 15 ante.

⁴² *Journal of Criminal Law and Criminology*, May, 1924, p. 61: "A Study in County Jails in California" (State Board of Charities and Correction, 1916), pp. 15, 53; Queen, *op. cit.*, pp. 52-54; *Mental Defectives in Virginia*, p. 70. The smallest percentage of recidivists in the jails that has come to the writer's attention is 17.5 per cent of 177 inmates in seventeen county jails of Wisconsin in 1920. See *Wisconsin Mental Deficiency Survey*, p. 17.

⁴³ "The Prisoner in the County Jail," *Mental Hygiene Bulletin*, March, 1925.

⁴⁴ Kirchwey, *op. cit.*, p. 25; *Prisoners: 1923*, p. 78. *The Survey*, Nov. 19, 1921, p. 279 quoted in Hart, *Report of the Committee on Treatment of Persons Waiting Court Action and Misdemeanor Prisoners* (New York, Mar., 1922), pp. 13-16.

⁴⁵ "Child Welfare Notes," *The Survey*, Nov. 10, 1921, p. 279.

street-walker is in the same place as the young girl who has come into conflict with the law for the first time. Consider the situation, then, with idleness and nothing to occupy the time except conversation! No wonder the jails have been called "schools of crime."⁴⁶

Consequent on all these conditions in our jails—the mingling of "all kinds and conditions of men," the idleness, the lack of wholesome discipline—is the destruction of whatever good results might come to the first offender by proper treatment immediately after arrest. Possibly this was the first slip from the straight and narrow path. The shock of the arrest and entrance into jail has sobered this first offender. He is in a state of mind that would make him receptive to good counsel and other influences that would strengthen his resolve to turn from his evil ways. Here is an opportunity for constructive and helpful work in the redemption of one gone wrong. Are such constructive influences at hand? Sad to say, they are not. There is no man there who cares for the inmate's fate, no one to whom he can talk and who in confidence can strengthen the new-found resolve, "Never again!" On the contrary, he finds himself in the company of inmates, many of whom have had numerous experiences of this sort, who have become inured to the discomforts and shame of jail life and who laugh off and shame his repentance. The only influence about him is degrading, hardening, calculated to inspire a defense reaction in a studied indifference and cynicism. Says Hart of the Russell Sage Foundation, who has visited hundreds of the jails, workhouses, and police stations in the United States:⁴⁷

When an individual who is not vicious is arrested, he should have the help of a wise and interested group of Christian people. These people should be in touch with the sheriff, the jailer and the prosecuting attorney, and should stand ready to give encouragement, counsel and advice to prisoners who are open to good influences. But this work should not be committed to men and women who are lacking in experience, wisdom and tact.

Such work would involve a very small expense, but it would need to be organized and advised by a wise and helpful State agent. In my judgment, this is one of the most important opportunities for the prevention of crime and for the saving of young people who have gone wrong.

The National Council of the Department of Christian Social Service of the Episcopal Church, under the leadership of Dean Charles N. Lathrop, started a movement to organize the Christian people of each communion for the purpose of doing the same thing in the county jails of the country. Dean Lathrop recommends no cut and dried religious propaganda but sympathetic visits to those in the jail who are in need of understanding and help.⁴⁸

J. F. Wright, Executive Secretary of the Pathfinders of America with

⁴⁶ Miner, *The Individual Method of Dealing with Girls and Women Awaiting Court Action* (New York, Mar., 1922), Ch. 49, pp. 8, 9.

⁴⁷ "And Ye Visited Me Not," *Literary Digest*, Aug. 11, 1923, p. 34.

⁴⁸ *A Practical Program for Church Groups in Jail Work* (New York, 1923).

headquarters at Detroit, Mich., has led a movement for the same purpose. He says:⁴⁹

It is when the prisoner hears the big iron doors close and lock behind him for the first time that his heart cries out for a friend, and it is then that the social worker whose heart is in the right place and battling for humanity can make a contact with the prisoner that will accomplish more good than after the prisoner has fought out those first conflicting emotions in his own mind and more than likely reached the wrong conclusions.

But in only a few jails do we find such a program.

ATTEMPTS AT SOLUTION OF THE JAIL PROBLEM

In spite of this history of neglect of the jail, numerous attempts have been made to solve the problem. Some efforts at ameliorating these conditions have been attempted in various parts of the country. State boards in some of the states have been empowered to inspect the jails and enforce certain minimum standards of cleanliness, ventilation, and other physical conditions. Others have conducted educational campaigns for the improvement of jails.⁵⁰ In a few states these measures have resulted in improvements; yet in spite of progress here and there the jails still remain for the most part such as we have described them.

Experiments to Reduce Idleness. Efforts have been made to reduce the idleness so prevalent in the jails. *Wisconsin's, Vermont's, and Delaware's parole experiments* may be cited. In spite of the success of Sheriff Tracy at Montpelier, Vt., and Sheriff Whipple's energy and initiative in Rock County, Wis., these experiments have not been widely successful.⁵¹ During World War I, John L. Whitman, then head of the House of Correction of Chicago, found it possible to keep the men busy and make the institution pay by salvaging the waste products of various city departments of Chicago and turning them into useful articles.⁵² In some of the larger cities the House of Correction has become recently *an industrial prison*. Certain industries are carried on there that bring some income to the county.

Judge De Lacy in Washington, D. C., tried the experiment of finding *remunerative employment for men on public works outside of the Dis-*

⁴⁹ *Practical Efforts at Character Building for Jail Prisoners* (New York, Mar., 1922), pp. 6, 7.

⁵⁰ *Humanizing Georgia's County Jails*, Department of Public Welfare (Atlanta, Ga., undated). See also various articles in *The Prison World*, and addresses in *Proceedings, American Prison Association* in recent years.

⁵¹ For Criticism of the Huber plan in Wisconsin, see Hart, *Employment for Jail Prisoners in Wisconsin* (New York, Mar., 1922), pp. 11, 13-14; Gillin, "The Paroling of Prisoners Sentenced to County Jails with Special Reference to Wisconsin," *Journal of Criminal Law and Criminology*, Jan., 1916, p. 684. In some places parole failed as a method of penalizing bootleggers sentenced to jail. The head bootlegger was at hand to hire the paroled prisoner from the sheriff at once upon conviction and thus release him to pursue his trade.

⁵² Baldensperger, "Salvation by Salvage," *The Survey*, Feb. 2, 1918, p. 495; *Mobilizing the County Jail*, Friends Social Service Series, Bulletin No. 22 (Philadelphia, 1917).

strict Prison in case they had been committed for non-support. Fifty cents a day of the man's earnings went to his family.⁵³ After the establishment of the workhouse at Occoquan, Va., where many of the prisoners worked out on the farm, the same policy was continued. A number of states have provided for such cases. Oregon in 1907 passed a law compelling family deserters to work on the public roads, giving the county court discretion to pay the families a sum not to exceed \$1.50 per day. Indiana and Maryland in the same year provided for the confinement of such men in the workhouse and the permissive payment of excess earnings to the family. Colorado and Michigan passed a similar law in the same year. In the other states just mentioned the law seems to have been little used. In Washington, D. C., under Judge De Lacy's plan of suspending sentence and placing men on public works and paying fifty cents a day for those who were in the workhouse, in four years \$104,759.68 was paid to the families of the men.⁵⁴ A number of progressive wardens of jails and houses of correction in some of the large states have developed *farms in connection with the institutions*, which have partially solved the problem of idleness, but like farms connected with prisons they are somewhat limited in their usefulness by reason of the fact that some of the inmates cannot be trusted at large.⁵⁵ Thus the same difficulties with respect to prison labor arise in such institutions as we have considered in connection with the prison. It must be confessed that up to the present time prison labor is much farther from solution in the house of correction or the county jail than in prison.

In some of the courts misdemeanants have been placed on *probation* under suspended sentence by the judge, thus doing away with all of the evils of incarceration in a jail. This is one of the most promising movements in connection with the whole problem. If the county will provide a sufficient staff of trained probation officers, this method would take care of a large number of those who otherwise would have to be sent to jail. It would not, however, adequately provide for the vagrants, floaters, drunkards, and others who need custodial care.

Another movement to relieve the county jails of their burden and misdemeanants of a jail sentence is the *payment of fines on the instalment plan*. The federal Census of 1933 showed that 31.7 per cent of the total number of commitments to jails and workhouses in the United States for all offenses were the failure to pay a fine.⁵⁶ The practice of permitting men to pay the fine while on probation has been adopted in a

⁵³ Spalding, "International Prison Congress, Section on Prevention," *The Survey*, Vol. XXV, Nov. 5, 1910.

⁵⁴ Baldwin, *Present Status of the Family Desertion and Non-Support Laws*, address delivered at the National Conference of Charities and Correction, 1911, pp. 29-31. An abstract of this address is to be found in the published *Proceedings*, but the figures are lacking.

⁵⁵ Barnes, "American Penology," *Journal of Criminal Law and Criminology*, Vol. XIII, Aug., 1922, p. 226.

⁵⁶ *Prisoners: 1923*, p. 121.

number of cities. Figures from certain cities and states, gathered in 1913, showed that over 90 per cent of those placed on probation by the courts to pay their fines in this manner did so faithfully.⁵⁷

To prevent the intermingling of those sentenced to jail for an offense and those awaiting trial or held as witnesses, *two institutions should be provided in the larger communities, one for the convicted, used as a workhouse or house of correction, and the other a place of detention.* In a number of cities this movement has resulted in the building of a special detention homes, one for women offenders and another for juvenile delinquents. In still other places juveniles who have been accused of an offense have been boarded in selected homes where they could be detained in desirable surroundings until their cases could be handled by the court.⁵⁸

The most promising experiment in connection with the minor offender is the *state farm for misdemeanants* established in a few of our states. The outstanding examples of this substitute for the jail as a penal institution are the State Farms of Indiana, Illinois, Maryland and Massachusetts and the workhouse of the District of Columbia. To Indiana's institution are sent all offenders sentenced to thirty days or more. At the discretion of the judge those sentenced for less time may be sent there rather than to jail. The counties pay transportation to and from the state farm, but the state pays for maintenance.

This plan accomplishes two purposes: (1) It places misdemeanants as well as felons under state authority. (2) It relieves in part the jails of those serving sentences, leaving them free to serve their original and primary purpose of detention. Since most of the delinquencies committed are violations of state laws, it has been urged that the state logically should handle the offender. Of greater social importance, however, is the social justification that the state can do it better. On the state farm the prisoners can be kept busy, thus solving the problem of idleness. Since the inmates are scattered over so large a space and are together only at meals and at night, chances of demoralization are less. The men are freer in their activities, are engaged in useful occupations, and do not degenerate physically and mentally.

Indiana's experiment has excited a good deal of interest and quite general approval.⁵⁹ The results have been all that was expected by the promoters. In spite of the reluctance of some judges to break a long-established habit of sending men to jail, in 1922 thirty of the Indiana

⁵⁷ *The Payment of Fines in Installments by Offenders*, Municipal Reference Bulletin No. 4, Municipal Reference Library (Chicago, Nov., 1914), p. 5; Collins, "Placing Misdemeanants on Probation," *Proceedings, National Conference of Charities and Correction*, 1911, pp. 89-92.

⁵⁸ *A Municipal Detention Home for Women Offenders*, Friends Social Service Series Bulletin No. 21 (Philadelphia, October, 1917).

⁵⁹ Lane, "In the Healing Lap of Mother Earth," *The Survey*, Jan. 1, 1916, pp. 375-378; Butler, "Indiana's State Farm for Misdemeanants," *The Survey*, May 8, 1915, pp. 135, 136; *Indiana Bulletin of Charities and Correction*, Dec., 1919, pp. 388, 389

jails were empty, sixteen others had only one inmate, and eight more had but two.⁶⁰

The state farm for misdemeanants is not a new invention. In 1870 Belgium established at Merxplas a colony for vagrants that is one of the largest in the world.⁶¹ The Canton of Bern, Switzerland, has another very successful institution at Witzwil, established in 1895.⁶² In 1910 the Province of Ontario, Canada, established such a farm, although it receives men from sixteen to sixty years old convicted "for all the calendar of crimes known except the great crime of murder."⁶³ Cleveland, O., in 1905, under the administration of Tom Johnson, began to take prisoners from the city workhouse to the city farms on a 2,000-acre tract on which were being established a municipal cemetery, the almshouse, and the tuberculosis sanitarium. In 1909 the first part of the group of buildings of the House of Correction on that land was occupied by the prisoners.⁶⁴ Kansas City, Mo., established a similar institution in 1909, and Congress in 1910 provided for a penal farm for the workhouse inmates of the District of Columbia on 1,150 acres of land at Lorton, Va.

Mention should be made also of the road-building camps of the County of Los Angeles, Cal., the work farm of St. Louis County, Minn., in which Duluth is located, and the district camps authorized by the North Carolina Legislature in 1931. Space does not permit detailed description of these and many more experiments, but the references in footnote 65 provide extended description for any one interested. It is slowly becoming apparent that the jail should be a place of detention only for those awaiting trial who cannot furnish bail or be released on their own recognizance, or who are likely to escape.⁶⁵

⁶⁰ About one-eighth of the commitments for misdemeanors in 1922 in Indiana were to jails. Most of these might better have been to the State Farm. See *Annual Report, Board of State Charities of Indiana, 1922*, p. 116.

⁶¹ Van Schelle, "A City of Vagabonds," *American Journal of Sociology*, Vol. XVI, July, 1920, pp. 1-20; Carlile, *The Continental Outcast* (1916), Chs. 2, 3; Gillin, *Taming the Criminal* (New York, 1931), pp. 201 ff.; Dawson, *The Vagrancy Problem* (London, 1910), Ch. IV.

⁶² Fetter, "Witzwil, A Successful Penal Farm," *The Survey*, Feb. 4, 1911, pp. 761-766; Gillin, *Taming the Criminal*, Ch. VI; Dawson, *op. cit.*, Ch. VIII; Kelly, *The Elimination of the Tramp* (New York, 1908), Ch. IV.

⁶³ Gilmore, "Farm Treatment of Prisoners at Guelph," *Proceedings, National Conference of Charities and Correction, 1914*, pp. 48-52; Gilmore, "The Ontario Plan," *ibid.*, 1915, pp. 375-378; Neelands, *Industrial Training for the Misdemeanant*, Prison Leaflets No. 46, National Committee on Prisons and Prison Labor (New York, 1919).

⁶⁴ Cooley, "The Farm Colony," *Proceedings, National Conference of Charities and Correction, 1912*, pp. 191-194.

⁶⁵ Lane, *op. cit.*, p. 378; Scott, "Municipal Correction Farms," *The American City*, Dec., 1916, pp. 623-630; Abbott, *The State Farm vs. The County Jail*, Prison Leaflets No. 51, National Committee on Prison Labor (New York, 1919); Elzell, "The District Plan of North Carolina," *Jail Association Journal*, Nov.-Dec., 1939, pp. 20 ff.; Bennett, "The Regional Work Farm," *ibid.*, Mar.-Apr., 1939, pp. 17 ff.; Ward, "The County Work Farm," *ibid.*, Mar.-Apr., 1939, pp. 25 ff. (Berks County, Pa.); "Vandalia State Farm," *Welfare Magazine*, Mar., 1926 (Illinois); Morton, "Prison Farms," *Prison Journal*, Jan., 1930, pp. 11 ff.; "The Prison Farm Movement," *ibid.*, pp. 20 ff.; "The Mont-

A MODERN JAIL PROGRAM

Two problems must be kept in mind in attempting to cure the present evils of jails:

1. Certain people have to be kept in detention awaiting trial or serving as witnesses.

2. After conviction treatment must be applied to protect society and to change the social attitudes of the guilty. Except for historical reasons there is no excuse for treating misdemeanants and felons separately. This distinction between felony and misdemeanor in the law has no basis in penology except society's traditional attitude toward a felony. If, however, we accept the principle of modern penology that the criminal rather than the crime should be the basis of treatment, then it makes no difference whether a person has been guilty of a felony or a misdemeanor. However, since we already have jails and since public opinion accepts the distinction between a felon and a misdemeanant, a practical program for the treatment of the misdemeanant must consider present ideas.

Jails as Places of Detention. Since almost every county has a jail, how can they be used economically and efficiently? These institutions can be used as places of detention for those awaiting trial and such witnesses as cannot be trusted at large. They should not be used as places of punishment at all. With the development of a sound policy of bonds for appearance, they need not be used even as places of detention, except for those accused of crime who could not be discharged from custody on their own recognizance or secure bonds of sufficient amount and security to ensure their appearance.

Treatment Based on Study of the Individual. Before any disposition is made of a convicted misdemeanant, he should be carefully studied. Knowledge of his physical condition, his mental state, and his social history will throw light upon the causes of his act and upon how he may be handled successfully. A physician, a psychiatrist, and skilled probation officer or a case worker attached to the court could secure the information.

Probation. Even after conviction many of those now sent to jail might be placed on probation and be gainfully employed without further danger to society. In order to make this plan succeed there must be well-trained probation officers, skilled in case work and sufficient in number properly to look after the probationers. In some populous counties such a system is in operation.⁶⁸

gomery County Prison Farm," *ibid.*, pp. 14; Hopkins, "Building a County Penal Institution," *ibid.*, pp. 17 ff. (Berk County, Pa.); Schaeffer, "Berk County Prison," *ibid.*, Apr., 1932, pp. 19 ff.; "A Model Prison Farm," *ibid.*, Oct., 1943, pp. 358 ff.

⁶⁸In the absence of probation a New Jersey judge stopped the petty graft of fees for arresting officers, justices, and jailers by reviewing the sentences of jail inmates and turning loose some of them. Thus he also relieved jail pressure. Ellis, "Pulling the Jail's Fangs," *Survey Monthly*, Jan., 1940, pp. 8, 9.

Fines. Large numbers of those now sent to jail are unable to pay fines. If the practice grows of allowing them to pay their fines on the installment plan under the careful supervision of probation officers, the need of the jail will be very greatly lessened.

Houses of Correction and Workhouses. Counties containing large cities may well provide houses of correction and workhouses in which can be confined those who cannot be put on probation or for whom a fine is inappropriate. In connection with these workhouses and houses of correction there should be forms of industry suited to the abilities of the individuals sent to them. There should be a farm on which offenders may work and produce a part, at least, of the food needed in the institution. No county having on an average less than one hundred delinquents should attempt to set up such an institution.

State Farms. A state farm should be provided to which would be sent the misdemeanants from counties with a population too small to warrant a workhouse or a farm for each of those counties. In connection with these farms certain industries can be organized to take care of the spare time of the inmates in winter. In the Southern states this is not necessary.⁶⁷

It is just as desirable in such an institution that there should be established the payment of a small wage for the inmates as it is in the prisons. Such a wage gives an incentive to the man to work, and in case he has a family it provides some support for them by their natural supporter. In case he has no family his earnings may be given to him on discharge or may be used to make restitution for the damages he was responsible for and the cost to the county of his trial and care.⁶⁸

The Indeterminate Sentence. Misdemeanants as well as felons should be committed to these institutions on an indeterminate sentence and should be kept there until they are fit to return to society. Usually the short sentence of misdemeanants is a curse to society and should be abolished. Misdemeanants as well as felons should be disposed of by a state treatment board rather than by the court on the basis of a sentence prescribed by the legislature. They as much as felons need careful study and treatment individually if society is to be protected and the individual offender restored to society. The time when he will be fit to be discharged cannot be determined beforehand by either a legislature or a judge.

Parole. There is just as much need for the establishment of a good parole system in institutions for minor offenders as in those for felons. When it appears that they are able to conduct themselves properly in society, they should be returned to it, under careful supervision, however,

⁶⁷ Each state may have one or more such institutions. When the state is not too large in area, one will be more economical. In large states there may be two or more such farms geographically distributed in the state so that the transportation expenses will not be excessive.

⁶⁸ Schreiber, "The Payment of Wages to Workhouse Prisoners," *Proceedings, National Conference of Charities and Correction*, 1915, pp. 385-392.

until they have shown their ability to make good. Some, even misdemeanants, should never be released because of their inability properly to conduct themselves at liberty.

Administrators. It is just as important to have competent administrators for the care and treatment of minor delinquents as for that of felons. If they are appointed for political reasons without reference to their capacity to manage such men successfully, any institution that can be devised will be a failure. If, however, instead of a large number of jails in each state there be one or at most a few state institutions, it should be possible to find competent men to administer them.

State Supervision and Control. There is no sound penological reason why misdemeanants should not be the wards of the state rather than of the county. In 1877 England saw the difficulty of allowing the jails to be controlled by county authorities and took over their administration. As a result the number of local jails has been greatly diminished, the cost reduced, better administrators put in charge, and recidivism lessened. The county jail as a place of punishment or correction is an anachronism due largely to the desire of county politicians for the political plums and economic rewards of the sheriff's office. Remove these and it will not be difficult to get through the legislature a law providing for state farms for short-sentenced misdemeanants. As rapidly as possible, except in the more populous counties, the state should take over entirely the treatment of all convicted delinquents. The arrest, detention, and trial of the accused would still remain with the county, while the functions of treatment which the county has failed to perform properly would be assumed by the state.

When state care and treatment is impossible, the state should at least have authority to supervise all police stations, houses of correction, and jails. It should set standards to which all these institutions should conform in the interests of health and morals. Such procedure, however, is only a half-way measure and should only be a step toward complete state control of all delinquents as soon as possible.

The Contract System for Misdemeanants. There is no more excuse for letting a petty delinquent out on contract than a felon. Abuses are bound to arise as has been shown in many of the large jails and work-houses and in the convict camps of the Southern states. No county should be allowed to lease its misdemeanants, as was the practice in Florida and some other Southern states in the turpentine and lumber camps. Inevitably such a practice leads to abuses that no self-respecting state can countenance.

CONCLUSION

The conclusion of the whole matter of the treatment of misdemeanants is that they, just as felons, must be treated according to the principles of penology. The time ought to come when the distinction between felons

and misdemeanants would be entirely done away with, when each individual would be sentenced to the institution in which he can be most appropriately cared for and if possible prepared to return to society, or in which he can be kept indefinitely for the protection of society. At the present time the distinction between misdemeanants and felons gives us two sets of penal institutions. for which there is no justification in either economics or sociology.

QUESTIONS AND EXERCISES

1. Outline the early history of the jail (*a*) in England; (*b*) in the United States.
2. In what important respects has the jail failed?
3. What are the reasons for the failure of the jail?
4. Visit the jail in your home community and then describe in detail the conditions you found there in the light of the discussion in this chapter.
5. Discuss the proposal *pro* and *con* that the men sentenced as misdemeanants for more than thirty days by the courts of all counties that do not have a house of correction must be sent to a state farm for misdemeanants.
6. In case you were appointed on a committee to visit jail prisoners, outline in detail what your program would be.
7. Outline a program for handling misdemeanants that would obviate the evils of the present jail system.

Chapter XXX

JUVENILE TRAINING SCHOOLS¹

Special institutions for delinquent children grew out of recognition of the evils connected with their association with hardened criminals. For over two hundred years the evils of such contacts have been recognized.

ORIGIN OF JUVENILE REFORMATORIES

In Europe. In 1704, Pope Clement XI founded the hospital of St. Michael at Rome. In this institution he had a hall set aside for the boys. Over the door he had inscribed, "For the correction and instruction of profligate youth, that they who when idle were injurious, may when taught, become useful to the State." While this institution was not primarily a juvenile reformatory and had, in addition to the hall for delinquents, departments for orphan boys and for the aged and infirm, it does mark an attempt to give correctional training in a separate institution to fifty criminal boys. In this department of the hospital Howard says there were sixty cells in three tiers, one above the other, on the two sides of the hall. The corridor between was used as a common workroom by day. The rule of silence was enforced.²

A similar institution was founded by Johannes Falk about 1813 in Weimar, Germany. This institution cared for the children of criminals and for delinquent children. It was an industrial school intended to give useful employment to the inmates. In 1823 an institution founded in 1819 in Berlin was changed in character so that in addition to caring for beggar boys, poor girls, and other destitute children, it had also a reformatory department. In 1820 an establishment similar to that of Falk in Weimar was founded in Erfurt, while still another in the same year was established in Aschersleben. A society for the education of children morally neglected, established in Berlin in 1824, founded a similar insti-

¹ For a general treatment of the delinquent child see *The Delinquent Child*, A Publication of the White House Conference (New York, 1932).

² Wines, *Punishment and Reformation*, Revised Edition (New York, 1919), p. 122. For the original account see Howard, *Appendix to The State of Prisons in England and Wales*, (Warrington, England, 1784), pp. 75, 76. See also Sellin, "The House of Correction for Boys in the Hospice of Saint Michael in Rome," *Journal of Criminal Law and Criminology*, Feb., 1930, p. 533.

tution in that city. By 1826, according to a publication of the Prussian Government, a number of cities of Prussia had similar institutions, among them Memel, Breslau, Danzig, Berlin, and others.³

In Great Britain. The origin of institutions for the correction of juveniles in Great Britain goes back to certain private organizations founded in the latter part of the eighteenth century. The Marine Society founded in 1756 and the Philanthropic Society founded in 1788 gave special attention to the children of convicts. To their care were committed from time to time under conditional pardon boys sentenced to transportation or to periods of imprisonment. The Philanthropic Society, incorporated by an act of Parliament in 1806, did such good work that in 1837 the government made an attempt to apply reformatory treatment to certain juvenile offenders at Parkhurst Prison. Outdoor industrial employment was combined with school instruction and religious teaching in the effort to reform juvenile delinquents there incarcerated. However, these boys were in a prison.⁴ This fact militated against the attempt at correction, and this experiment was closed in 1864. In 1843 the Home Secretary, impressed by the superior work of the Philanthropic Society, suggested to that society the establishment of a reformatory aided by a subsidy from the treasury. The society did not, however, accept the the proposal since it feared that the acceptance would sacrifice the voluntary contributions it was receiving. It did, however, a little later send the warden of its school to France to study the farm colony established at Mittray. The result of this visit was to transplant the institution from London to the country, in Surrey, where it still stands. It is described as one of the most efficient institutions for the correction of juveniles in England.

Origin in America. It is said that Thomas Eddy, a New York Quaker, and some of his friends began to discuss a reformatory for juvenile delinquents in that city as early as 1815. Out of the meeting of these citizens grew the Society for the Prevention of Pauperism. This society in 1822 urged the establishment of a reformatory for juveniles to which children might be sent instead of to prison. The same year Edward Livingston urged the establishment of such an institution. The inspiration seems to have come from a man named Griscom, who in 1818 and 1819 had visited England and the Continent and had discovered that England in 1817 had founded a society that had established a juvenile reformatory. This

³ Moreover, in the British houses of correction established even earlier than these institutions there were departments for juvenile offenders, but these could hardly be called juvenile reformatories. See also note by Lieber in De Beaumont and De Tocqueville, *Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), pp. 108-110.

⁴ For an extended description of the children's department of the house of correction at Tothill Fields, Westminster, London, about 1856 see Mayhew and Binny, *The Prisons of London and Scenes of Prison Life* (London, 1862), pp. 376-452. For a more extended history of juvenile reformatories in this country and abroad see Barnes and Teeters, *New Horizons in Criminology* (New York, 1943), Ch. XXXVII.

institution Mr. Griscom had visited.⁵ This society in its report urged that such institutions should be schools of instruction and reformation rather than places of punishment.⁶

As a result of the active interest taken by this society a committee was appointed to study the matter, which recommended in 1823 the erection of a separate building for juvenile offenders to be called the House of Refuge. It was intended to receive young offenders both before and after trial and to serve also as a place of temporary refuge after discharge from prison. The sum of \$18,000 was raised in private subscriptions, and in 1824 a board of managers was appointed. The institution was incorporated by the state and given broad powers to receive and retain as long as necessary juvenile delinquents committed to it. Here for the first time we find the indefinite sentence for delinquents. The Society in turn was obliged to submit an annual report to state authorities. Commitments might be made by the police courts, courts of special or general sessions, or the commissioners of the almshouse.⁷ This institution was unique in one respect. *It was the first institution anywhere, so far as we know, to which children were committed by court.* The earlier institutions to which we have referred in Europe received inmates only through voluntary applications. In 1826 Boston had set apart a portion of its old House of Correction for juveniles much on the lines already established in the English houses of correction. In 1828 Philadelphia established a similar House of Reformation to eliminate juvenile offenders from the Walnut Street Prison, which by that time had proved to be a distinct failure.⁸

The Boston institution for a time had the most remarkable career of these early institutions, thanks to the work of its superintendent, Wells. Wells, once a student at what is now Brown University, had been expelled from that institution because he refused to tell on his roommate who had been in a student prank. Later the same institution awarded him the A.M. degree for his successful work with juveniles. He showed remarkable insight into the principles of juvenile correction for his day and generation. One of the fundamental principles he established in the House of Reformation was that no boy should be required to inform on another nor should he be allowed to do so unless it was evidently for conscientious reasons rather than for reasons of personal advantage. Corporal punishments were entirely excluded, and the children had a form of self-government in that they were permitted to vote on the methods by which they would be corrected. Each child recorded every day in a book kept for that purpose his marks of merit and demerit. They had a jury of twelve

⁵ Lewis, *Development of American Prisons and Prison Customs, 1776-1845* (Albany, N. Y., 1922), p. 294.

⁶ *Report of Society for the Prevention of Pauperism, 1821*, cited in Lewis, *op. cit.*, p. 295; Peirce, *A Half Century with Juvenile Delinquents* (New York, 1869), pp. 55-78.

⁷ Lieber, in De Beaumont and De Tocqueville, *op. cit.*, p. 109; Lewis, *op. cit.*, pp. 295-297.

⁸ Lewis, *op. cit.*, pp. 40, 160, 302-303, 316.

children who tried offenders against morality and certain other offenses. Moreover, the children elected their own monitors.⁹ The inmates of the institution were divided into six classes according to conduct. Those in the lower classes were deprived of certain privileges. These features anticipated experiments in self-government not only in juvenile reformatories but in institutions for adult delinquents by nearly one hundred years. Unfortunately, Wells was ahead of his time and was soon dismissed by the Common Council of the city of Boston.¹⁰

DEVELOPMENT OF JUVENILE REFORMATORIES

In Great Britain. In 1846, the attempt was made to pass a bill in Parliament to establish governmental reformatory schools. This bill failed of passage. In 1854 a similar bill was made law. This law was modeled on the French plan as carried out in the farm colony established at Mit-tray. It provided industrial training, the introduction of the family system into the institutions, and careful supervision on parole. This bill, however, went further than the French system and provided for the payment of part of the cost of care of the juvenile by the parents. It also carried a provision, which has since been abolished (1899), for a short period of imprisonment for the offender before being handed over to the school.

A number of changes have been introduced into the laws relating to methods of handling juvenile delinquents below the age of seventeen in England and Wales. In 1933 the following institutions were provided for their reception: (1) approved schools and remand homes to take the place of reformatory and industrial schools; and (2) places of detention. Adolescents eighteen to twenty-three years of age are handled in the Borstal Institutions to be discussed later.¹¹

In the United States. The history of early American juvenile institutions was much the same as that of the prisons. The first period of promise was followed by one of steady deterioration. In 1834 the Boston House of Reformation became one wing of the House of Correction. In 1836, while the children were removed to a new institution apart from the House of Correction, their labor was let out to a contractor at ten cents per day.

The Philadelphia institution, opened in 1828, like the New York institution, started as a private enterprise for which \$15,000 had been raised,

⁹ These features in the Boston institution attracted the special attention and favorable comment of De Beaumont and De Tocqueville when they visited the United States about 1830.

¹⁰ Lewis, *op. cit.*, pp. 303-309; De Beaumont and De Tocqueville, *op. cit.*, Part III, Ch. 1, Appendix No. 13. The institution at South Boston attracted the attention of Charles Dickens when he made his American visit and is described in his *American Notes*. See also McKelvey, *American Prisons* (Chicago, 1936), pp. 13-15; Niebecker, "Education of Juvenile Delinquents," *Annals of the American Academy of Political and Social Science*, May, 1904, p. 483.

¹¹ *Criminal Statistics, England and Wales, 1933* (London, 1935), p. 24; see also the discussion of the situation in Myers, "England's Industrial and Reformatory Schools," *Social Forces*, Vol. XI, Mar., 1933, pp. 373-378.

to which was added \$40,000 by the Pennsylvania legislature. The separate cell system was adopted, and a huge wall was constructed around it, which gave it very much the appearance of a prison. A somewhat greater variety of trades was taught than in New York or Boston, but the labor of the children was let out to a contractor at twelve and a half cents a day. From the experience of the Philadelphia House of Refuge, it became apparent that these institutions were very much more successful with young children than with older ones, and the managers urged that only children under sixteen years of age be admitted.¹²

The first step to organize a state institution for juvenile delinquents was taken by Massachusetts in 1847 when the State Reform School at Westborough was established by law.¹³ However, the first state to make the juvenile reformatory un-prison-like was Ohio. In 1854 the Ohio State Reform School, now the Ohio Industrial School for Boys, changed from prison buildings and discipline to school and home buildings and a discipline based upon the theory that children are not criminals.¹⁴ The State Reform School at Lancaster, Ohio, introduced the first cottage system in America.¹⁵

In 1830, when De Beaumont and De Tocqueville visited the United States, there were not more than three juvenile reformatories or houses of refuge in this country. By 1850 in the United States there were but eight such institutions. The number, however, gradually increased. In 1900 there were sixty-five such reformatories reported, with a total of 19,410 inmates. These reformatories reported that during their history they had received 209,600 juvenile delinquents. In 1928 the United States Bureau of Education reported 173 institutions for juvenile delinquents. In 1940 the Children's Bureau of the United States reported 115 state and forty-three county and municipal institutions for children declared delinquent by a court.¹⁶

THE FALL OF THE HOUSE OF REFUGE

The early institutions in the United States were greeted with enthusiasm here and with admiration by such distinguished foreign visitors as De Beaumont and De Tocqueville. To-day, unfortunately, juvenile reformatories do not enjoy a very high esteem.

¹² Lewis, *op. cit.*, pp. 317-320; Reeves, *Training Schools for Delinquent Girls* (New York, 1929), ch. 2.

¹³ Wines, *State of Prisons and of Child-saving Institutions* (Cambridge, Mass., 1880), p. 126.

¹⁴ Hart, *Preventive Treatment of Neglected Children* (New York, 1910), p. 11.

¹⁵ *Proceedings, American Prison Association, 1910*, p. 35.

¹⁶ Barrows, *The Reformatory System in the United States, Reports Prepared for the International Prison Commission, Fifty-ninth Congress, First Session House of Representatives, Document 459* (Washington, D. C., 1900), pp. 227-228; *Industrial Schools for Delinquents*, Bureau of Education Bulletin, No. 10, 1928 (Washington, D. C., 1930); *Directory of State, County and Municipal Training Schools Caring for Delinquent Children in the United States*, Children's Bureau Publication No. 264 (Washington, D. C., 1940).

Why the Change in Attitude? (1) Consider the ideals of those who established the early American institutions, and the character of the early administration. The ideal of the American house of refuge was that not of punishment, but of training in good conduct and for a useful trade. Moreover, these early institutions of New York, Boston, and Philadelphia, when the juvenile was let out, followed him by a system of supervision. If he relapsed, it was the privilege of the institution to retain him until he was of age. (2) Furthermore, heads of these early reformatories in the United States were unusual men. De Beaumont and De Tocqueville remark, "If a model of a superintendent of a house of refuge were required, a better one, perhaps, it would be impossible to find, than that which is presented by Mr. Wells, and Mr. Hart. A constant zeal, and indefatigable vigilance, are their lesser qualities; to minds of great capacity, they join an equanimity of character, the firmness of which does not exclude mildness. They believe in the religious principles which they teach; and have confidence in their own efforts. Endowed with deep sensibility, they obtain still more from the children, by touching their hearts, than by addressing their understandings. Finally, they consider each young delinquent as their child; it is not a profession which they perform, it is a duty they are happy to fulfil."

(3) When the first flush of enthusiasm had died away, thanks to politics or indifference, and small men had taken the places of those who had seen in the juvenile reformatory a great opportunity, these institutions became less schools and more juvenile prisons. The glory of their idealism had departed; in its stead had come deadening routine and repression.

(4) More recently there has risen a sincere and deep-seated distrust of institutions for children. Upon the horizon of social experience have appeared better methods of correcting the defects of character. The juvenile court, with its parental attitude and its system of probation; placing children in better social surroundings; juvenile protective associations, with their ideals of prevention; the Big Brothers and Big Sisters, the Boy Scouts, and the like, have shown us a better way for all but the defective and the incorrigible.

Evaluation. People evaluate juvenile reformatories in accordance with their wishes and prejudices. Some think that they are performing as well as can be expected considering the material with which they deal. Their inmates are the failures of the home, the school, and the community.¹⁷ Others acquainted with cases in adult reformatories and prisons find the juvenile institutions instruments of such emotional distortion, cruelty, and mishandling that the juvenile who experiences them is likely to commit further crimes.¹⁸

These are general statements. We should like to know what have been the results measured statistically. Unfortunately there have been very

¹⁷ Ruggles-Brise, *The English Prison System* (London, 1921), pp. 99, 100.

¹⁸ Tannenbaum, *Wall Shadows* (New York and London, 1922), pp. 69-73.

few careful studies that show what proportion of those who have been sent to juvenile reformatories have done well after release. In the early years of this century, however, a study was made in New York State of 444 juveniles released on parole from two such institutions in that state. In 1906 and 1907, 444 girls paroled from the New York State Industrial School and the New York House of Refuge were studied to see what happened to them after leaving the institution. Miner found that 32.87 per cent were doing well; 26.85 per cent were doing badly; 13.43 per cent were doubtful; 23.61 per cent were not heard from; and 3.24 per cent had died.¹⁹

In 1916 a study was made of 408 delinquent boys committed by the Juvenile Court of Seattle, Washington. Of this number 346 were committed to the Parental School, some of whom had never been delinquent, but dependent. Of those sent to the Parental School 13 per cent showed unsatisfactory conduct following discharge, while of those sent to the reformatory 11 per cent were known to have served or to be serving time in some correctional or penal institution.²⁰

Healy and Bronner found that of 164 successes among juvenile delinquent boys in Chicago, 56 per cent—and of 256 failures, 86 per cent—had experienced a juvenile correctional institution. For females 56 per cent of the successes and 79 per cent of the failures had been in such an institution. In their first Boston series for boys 27 per cent of the successes and 40 per cent of the failures, in the second series 36 per cent of the successes and 50 per cent of the failures, had been in a juvenile correctional institution.²¹ The Gluecks found that of 604 previous commitments that had been experienced by a part of their 510 inmates of the Massachusetts Reformatory for men, 34.6 per cent had been to industrial schools for juvenile delinquents.²² A study of the inmates of the Ohio State Reformatory in 1932 showed that 21.79 per cent of the inmates had been in Boys' Industrial School of that State.²³

Mental Abnormality and Reformatory Failure. Healy and Bronner have shown that of 675 Chicago juvenile delinquents 79 per cent were of normal intelligence, 16 per cent were feeble-minded, and 5 per cent were psychotic. While of the mentally normal 49 per cent were failures, of the feeble-minded and psychopathic personalities 67 per cent, of the psychotic 71 per cent, of the psychoneurotic 40 per cent, and of the constitutional

¹⁹ *The Survey*, Feb. 16, 1907, pp. 903-919.

²⁰ Cowdery, reviewing Phillips, *A Study of the After-Career of 408 Delinquent Boys Committed from the King County Juvenile Court to the Boys' Parental School and the State Training School during the Five-Year Period, 1911-1915*, *The Seattle Juvenile Court Report for the Year 1916* (Seattle, Wash., Jan. 17, 1917), p. 8; in *The Journal of Delinquency*, Vol. II, Sept., 1917, p. 299.

²¹ Healy and Bronner, *Delinquents and Criminals; Their Making and Unmaking* (New York, 1926), pp. 72-75 and Tables 14, 15, 16.

²² Glueck and Glueck, *500 Criminal Careers* (New York, 1930), p. 145.

²³ Caldwell, "Is the Reformatory Reforming the Prisoners?" *Journal of Juvenile Research*, Apr., 1934, p. 99.

inferiors 62 per cent were failures. Of 125 sent to correctional institutions 71 per cent were failures.²⁴ A study of 233 boys released from the California State Training School at Whittier shows that there is a degree of positive correlation between mental capacity and success after release.²⁵ But other studies show that there are other factors than intelligence of greater importance—personality, social conditions, emotional instability, and circumstances after release.²⁶

RECENT EXPERIMENTS

The changes that we have seen taking place since the idea of a juvenile reformatory originated in 1824 have continued. Many experiments are continually being made in the technique of correcting the conduct of juveniles. The tendency in recent times has been to send to the juvenile reformatory only the most difficult cases. Most problem cases are handled first by the schools, clinics, Boy Scouts, Big Brother organizations, orphanages, Junior Republics, and similar institutions, and by probation under Juvenile Courts. It has been felt that every other method should be tried before a child is sent to a reformatory, because of the stigma attached to a child who has had to be "sent away." But sometimes an institution seems to be the only solution.

On the other hand, the Gluecks have shown in their studies that individuals with certain characteristics do better under extra-mural methods of treatment, whereas those with other characteristics behave better in institutions.²⁷ The outcome in any case depends so much upon the understanding and skill of those who have charge of the delinquent.

Case Treatment of a Boy. That proper treatment in an institution may work wonders in the correction of evil habits, even in the case of some delinquents who have failed to profit by training in a juvenile reformatory, is shown by the story of a young pickpocket. Thirteen years old when he finally was placed in an orphanage that had an understanding superintendent, he had a very bad history to be overcome. Born prematurely into a family composed of a drunken father, who had abused the mother, and a good but weak mother, from his earliest days he had found his associates among the boys of a bad gang of the streets. As he grew older he became a member of a very tough gang, and by reason of his quick intelligence and small physique he became a most skilful pick-

²⁴ Healy and Bronner, *op. cit.*, Ch. XVI and Tables 49, 52; see also Ordahl and Ordahl, "A Study of Delinquent and Dependent Girls," *Journal of Delinquency*, Mar., 1918, p. 70.

²⁵ Clark, "Success Record of Delinquent Boys in Relation to Intelligence," *Journal of Delinquency*, Vol. V, Sept., 1920, p. 174 ff. See also Mathews, "A Survey of 341 Delinquent Girls in California," *Journal of Delinquency*, Vol. VIII, May and July, 1923, p. 228.

²⁶ Cochran and Steinbach, "Fifty Recidivists in the Norfolk Juvenile Court," *Mental Hygiene*, Oct., 1934, p. 576; see also Glueck and Glueck, *Juvenile Delinquents Grown Up* (New York, 1940), Ch. IX.

²⁷ Glueck and Glueck, *Juvenile Delinquents Grown Up*, Ch. XIX.

pocket. He also learned to pick locks. He was sent to a disciplinary school, but upon discharge returned to his old haunts and ways of life. As a last chance before being sent to the Reformatory he was sent to the orphanage in the hope that some change might be made in him there. It was a fortunate thing for him. The following story of his treatment under this wise superintendent is given to show how by individualizing the treatment, which consisted in a most remarkable individual and group pressure, this warped character was rehabilitated: ²⁸

The first few days of his stay at the Home were uneventful and peaceful. He was obedient, well-mannered, and apparently anxious to please. But his first Sunday at the institution was a memorable occasion for all within the portals of the place, whether as resident or as visitor. Silently, unobtrusively, and skillfully, he went from the pocket of the director in the office to that of the humble visitor in the children's hall, and democratically and impartially extracted from each whatever contribution his nimble fingers could "touch." Then he made a clean getaway with a substantial sum as the result of his prowess.

The monitor who had been appointed his Big Brother, feeling that his absorption in a ball-game held at the Home grounds that afternoon had been responsible for the other's defalcation, earnestly and thoroughly searched every nook and cranny favored by the city's youthful reprobates. After several days of fruitless effort, he pounced upon him after nightfall, in a forsaken lot near his home, surrounded by his gang of ragamuffins, who were making merry with sandwiches, ice-cream cones, and bottles of pop, and enjoying an account of his escapades.

"Cheese it!" he cried to his comrades, who scampered away, like rats to their holes; and then facing the older boy, who was seriously regarding him, he announced, "I was coming to sleep there to-night anyway; I ain't got no more money." And he willingly accompanied his mentor.

He was brought into the office, much the worse for the wear and tear of his wanderings, but otherwise unrepentant and unashamed; rather prepared to boast of his exploits.

"Do you think it right to pick a man's pocket? How should you like to have your pocket picked by somebody?" he was asked.

He looked up quizzically, his eyes gleaming and his mouth puckered in amusement, "I just dare anyone to pick my pocket—let me jus' catch 'im."

"What would you do?"

"Huh?" he queried. "Jus' don't let him. I ain't no duck to have my pockets picked. I'm too quick." With that he turned his pickets inside out, and said with a doleful grin, "Aint got nuthin' in 'em anyway now."

"But you haven't answered the first question. Do you think it right to pick a man's pocket?"

He looked thoughtful and evidently perplexed. "Well," he said after a pause, "the man ain't goin' to give you the mon', so what's you goin' to do about it?"

"How about earning it?"

He screwed up his small face in mockery and laughed outright. "Say," he questioned, "what do you earn a week?"

Rather a rude question, but he was answered to his satisfaction, for he shrugged his shoulders triumphantly and waved his hand in derision. "Gee," he said, in cool, scornful tones, "I can make more 'an that in a day. I got a talent in my hands, I tell you," he flung out his hands and regarded them lovingly,—

²⁸ Drucker and Hexter, *Children Astray* (Cambridge, Mass., 1925), pp. 193-201. (Reprinted here by special permission of Harvard University Press.)

"they can make more money for me than you know. Bet cher life, they're all right."

"Who told you about the talent? Who said your hands were talented?"

"That guy in the school said they're so quick and—I guess I forgot that word—s'pose he meant smart, and that they're sinistinctly talented that way."

Suddenly he leaned across the desk. "'Scuse me," he said; and the next moment, he held up triumphantly the watch that his light fingers had "touched," even before his intentions were realized. "You see," he said, laughing merrily, "how I do it? One! two! three!—and it's gone! Ain't it some talent? Here, take your watch! I don't want ter keep it—jus' took it to show you."

"For what else have you a talent? Anything you'd like to be when you grow up?"

He scratched his head thoughtfully. "Well," he ruminated, "I guess I got a talent for locks, too. I can make a key for any lock made. Want ter see me? You jus' show me a lock, and I'll show you how I open it," he boasted.

"But what do you want to be when you grow up?"

"Guess I'll blow up safes with dynamite, and make lots of money and have bully times."

"Suppose you're caught and put in prison, what then?"

His eyes narrowed and he tossed his head. "But I'm a slick one, I am, honest! I ain't no fool—wait till I grow up, then they can't catch me."

"If you're slick, how is it they caught you now?"

"Aw, gee, them blokes can run down the little fellars easy. When I'm big, I bet you the cops can't get me."

"All right," he was told; and then came the question, which, unknown to him, held his fate. "Say, how would you like to be partners and stay here till you grow up?"

His astonishment was plainly manifested in his face. "You want ter be my pardner?" he queried, as if not believing his senses.

"Your partner, son," was the emphatic reply.

"Sure thing," he cried gleefully, and extended a dirty paw; "shake," he said.

"Now it's all arranged," he was informed very quietly. "You stay here till you grow up, and come to your partner every time you want to pick a pocket or a lock, and talk it over."

There was rather a rueful expression on his face at that. Evidently instinct warned him of a trap, and for a moment he repented; but he was a game sport.

"Sure, you got to do that with pardners," he said, bravely enough.

A solemn compact was then entered into, by which he bound himself to come to his "pardner" when ready to do any "job," and not to run away without due warning. In return, he was to be given a good home, plenty of "eats," and be taught in the manual-training classes whatever he liked.

"In a couple of weeks, bet you I'll know how to make a key for all the locks in the world," was his parting remark, as he left the office to be cleaned up and fed.

The next morning, bright and early, he was in the office. "Say, pardner," said he, "you got lots of junk in that basement. I know a place where the geezer will pay you lots of money for that."

The "junk" referred to consisted of various supplies left by the plumbers who had been working in the basement the previous day.

"All right, son," he was informed, "if the junk belongs to your partner, you may sell it for what you can get from the dealer. Let's go down and see."

Standing before the "junk," he was told, inasmuch as the materials lying there belonged to the plumbers, his "pardner" did not think it quite right to dispose of them before notifying the owners.

"But they won't give it ter you. Wait, you see!" he warned.

Meanwhile, awaiting the arrival of the plumbers, it was suggested to him to accompany his "pardner" to school. His eyes mirrored indignation and dismay. It was obvious that he repented of the bargain into which he had permitted himself to be drawn, but loyalty to one's "pardner" was paramount. "I never had a pardner like you," he observed, as he gravely permitted himself to be persuaded to take the unbeaten track to school; "you're funny. What's you want ter go to school for? Don't cher know enough?"

During that sober, conventional walk to the school that morning, it was painstakingly explained to him that education assists a man in his profession; if he intended to be a pickpocket when he grew up, why, a knowledge how to count the money he would pick from pockets would undoubtedly redound to his advantage. Further, people would not be able to charge him double the amount of a thing because he did not understand figures.

"That's so," he said, thoughtfully; "them darn geezers first want to see your junk and then pony up a jit (nickel) for what's worth a buck (a dollar), if you don't watch out what they hand you out. Plenty of times they cheated me."

"But they never would have done so, if they knew that you could count," he was told.

"That's so," he said again; "but say, pardner, I don't have to stay in the poke (school) all day?"

"Of course not," as he gazed up keenly, suspicion and combat in his eyes. "The only thing is, that you're some smart guy, believe me, and is there any reason why you can't win the school prize as well as another fellow who isn't so smart?"

"Sure thing I can," he said heartily; "got to dig (study)."

By dint of careful reasoning, that it would be a remarkable thing for him to show all those who didn't believe that he could, if he wanted, carry off honors in school, as readily as he carried off the contents of pockets, and that learning would enable him to get even "with them skinnners," he reluctantly consented to give the matter a "try out."

He was placed in the ungraded class, under the charge of a very able and well-trained teacher, and his Big Brother was instructed to call for him and accompany him home. "Watch out for that junk!" was his good-bye to his "pardner."

That day in school was a sad one for his conceit. "Say," he confided regretfully, "them little guys know more 'an me."

"Going to let them 'get ahead of you, eh?"

"Nix on the job," he fired back; "I'll show 'em."

He left for a game of ball in the playground, but returned almost immediately. "What did I tell you?" he queried angrily. "Them plumbers don't want to give their junk away."

"Let them keep their old junk then. You just show those fellows in school you can win the prize away from them, and you and your partner will go down town and have some good time."

"All right, pard, I'm it!" He saluted brightly, smiled, and went back to the game interrupted by the tempting "junk."

Hardly was the game over, when the manual-training shops awaited him. Here he felt quite at home and was busy and contented. He showed a marked predilection for printing, which was immediately utilized for his benefit.

For several weeks he was not left a moment to himself, though he was kept unaware that the constant supervision was intentional. He, at first thought, regarded his Big Brother, who was his shadow, as a necessary institutional evil; and later became fond of the fine, wholesome boy who was his friend and com-

rade. Two or three times a day, he would glide into the office with suggestions of various "jobs" to be done. Always a lengthy argument would follow about the inadvisability of "hooking" school or a class because of a "job" that wasn't worth while at all.

"But I'll lose my talent in my fingers if I stop for a long time," he protested.

"Nonsense! Give your fingers a rest and they'll grow stronger and bigger to do whatever you want them," he was told.

Temptations however assailed him so strongly that several times he managed to elude vigilance and run away for a day or two. Then he would return, himself, come very quietly and shamefacedly into the office, and seek pardon most humbly. "You know, pardner," he would say apologetically, "it's not right to do a job without you—but you're a funny kind of a pardner, anyway."

Long private conferences and walks would ensue, during which a moral sense of right and justice would be brought home clearly to him. His affection for his mother was noticed, and that excellent quality was used as an additional means to work upon his character. His mother's hard lot in life was fully presented to him. It aroused his sympathy, and he expressed himself as willing to do anything to lighten her burdens. When it was forcibly presented to him that having a pickpocket for a son would be even a greater tragedy to her than having a drunkard for a husband, he blinked in amazement and blurted out, "Why, I won't ever beat her like him. You don't get drunk when you are a pickpocket."

As the most convincing proof of his mother's future agony, in case he became an adult pickpocket, the mother was requested to come to the office, and in his presence the matter was brought up. The poor woman burst into tears and hoped that death would be good to her and take her away from the world before she witnessed any such unfortunate ending of her eldest son.

"Well," said the boy magnanimously, wiping the tears from her eyes and patting her heaving shoulders, "don't carry on like that. If you want to die if I pick pockets, well, all right then, don't die, and honest to God! I'm going to try not to do it." Then he shrugged his small shoulders in surprise. "Funny!" he ejaculated, "that she didn't get fits before. She knew I was doing it all the time, and she didn't want to die before. Guess she's tired of them beatings."

He responded very favorably to the normal, wholesome influence of home thrown about him. Good food, early hours and healthful recreation had excellent results upon his physique. He gained in weight and seemed stronger. He was allowed to spend much of his spare time with the fireman and other employees in the building, of whom he was fond. He frequently visited the kitchen and assisted the cook in peeling potatoes, paring vegetables and sharpening her kitchen knives....

In school he won the monthly prize given by the principal to the best student of the ungraded class, and of course was fêted downtown and taken to a theatre. He enjoyed the treat immensely and remarked, "Say, it's bully to be a swell guy." In three years he reached the Sixth Grade, and as he had manifested great interest in the printing plant, and had actually been one of the leading printers on the monthly publication of the Home, it was decided to permit him to take up printing, with the view of turning his avocation into a future trade for him.

He was offered a mechanical training in a technical school, and joyously wanted the opportunity, till he was informed that he would have to be graduated from the public school, in which he still had two years' work before him. He hesitated and avowed his aversion to continue schooling. "What's the use?" he asked; "I'll never be a teacher anyhow; and besides, I don't want to be a teacher and bother my head with lots of stupid kids. I'd rather anyhow be a printer and make money doing good jobs." As these jobs were decidedly to be preferred

to his former "jobs," he was encouraged at the vocation he had selected; and on his sixteenth birthday, he announced, "Now I'm ready to start in the world for myself like Benjamin Franklin." With the latter as an example and guide, there were no further doubts entertained about his future.

He had not taken kindly to games and sports, but had manifested a rather tame interest in the Scouts, which, after a while, became stronger; and after a year had passed without any outbreak on his part, he was permitted to join the Scout Troop. Returning from a hike one day, he complained that he felt unwell, and came down with influenza, which was then ravaging the city. During his illness he was given every possible care and attention, for which he felt both gratitude and amazement. "Say, partner," (it had become partner instead of "pardner"), "you know, I've been thinking an awful lot while I lay here. Everybody has been so good to me and been doing and making things for me, and I giving them so much trouble and bother, I guess it pays to be good; I don't suppose anybody would care whether a pickpocket lived or tossed the bucket. I guess no pickpocket for me ever."

Some time before, his younger brother had been admitted to the Home, and was now duplicating the elder's former exploits. He was genuinely grieved and concerned about the boy's delinquencies, and would frequently argue and plead with his brother to behave himself. Often, he took the law into his own hands, and administered a beating to the culprit, who would calmly assert, "Aw, chee, I'm not badder 'n you were." This never failed to enrage him, and he would expostulate long and volubly. He would then come into the office, sad and weary, and would remark hopefully, "Well, you see he is very young and has no sense. When he gets older, he wouldn't be so foolish." He was the Big Brother assigned to the boy; and it may be said for him that he performed his duty most conscientiously and faithfully.

It was the printing instructor who announced that the boy was able to work as a full-fledged printer, and it was he who assisted him to procure his first job as a printer's assistant. He earned a small salary for several months, and was retained at the Home till his earning capacity would permit him to return to his own home and assist in the support of his mother. Before he had been employed a year, he was earning \$15 a week.

"Good-bye, partner, thank you!" he said to the Superintendent when the latter parted from him.

When he left the Orphanage, he had \$200 that he had saved from his salaries, and he informed his mother that "now good times are coming for you." He sought and found a small apartment in a better neighborhood, undertaking to pay the rental himself; purchased some new furniture, which was sorely needed; and informed his father that now things would be changed and, if he wanted to remain at home, he must simply give up drinking.

The father, frightened and greatly intimidated by the determined action of his oldest son, promised. Fortunately for him, as well as for the members of his family, prohibition coming into effect, he was perhaps better able to keep the promise he had been forced to give. Also, the son took it upon himself to see that his father was employed at his trade of carpentering, with the happy result that the mother was able, for the first time in her life to realize her hope of a home.

In March, 1922, a letter received by the "pardner" from the boy, stated that "things were just swell." In view of the fact that he was now employed in a printing-shop, the boy was in receipt of a higher salary, and asked his friend whether he didn't approve of his contemplated plan to keep his father to the straight and narrow path, by offering to purchase a home for the parents.

"You see," he writes, "my old man now sees that he made a big mistake all

his life and wants to be a man now. If he'll know that I stop paying for the house the moment he breaks his word, I guess that will keep him right, don't you think so?"

He has been living at home, giving his salary to his mother, and trying his utmost to create and maintain a home for the benefit of the entire family.

Changes in Reformatory Methods. A change gradually is coming over the leaders of thought concerning the juvenile training schools. Once it was believed that what was needed was a carefully regulated régime in which the child would by almost constant repression and suggestion be taught habits that would stick after release. Better understanding of the circumstances and individual characteristics that account for the delinquency has led to a change. Says one of the leaders of the new and better way: ²⁹

After all, what is a delinquent girl, and what is necessary to correct her in a state institution? Let us take for example a young shop-lifter. She is sixteen, as tender-eyed as Leah, with an expression of innocent freshness. Physically she is normal, mentally she is up to grade. For four years she has stolen from neighbors and shops, her thefts amounting to hundreds of dollars. Once she accused a man of good reputation of taking advantage of her. Court and community were deceived by her tale. Finally she is committed to a state school. Careful study uncovers her history: her parents married young; they were mis-mated and their religion and marital relations were subjects of constant dispute. The girl slept in the same room with her parents. Finally they were divorced and the girl went with her mother who was so excellent a housekeeper that she made the girl remove her shoes on entering the parlor. At the age of twelve she commenced running away and stealing. Shy, secretive, full of fancies, what institutional program would restore this young girl's mental health, or unburden her mind of its load of hidden impulses? To teach her to cook, wash, sew and do gymnastic exercises would not be enough. No amount of training in useful habits would correct her stealing. Nor could the problem be solved in a laboratory. She must be reëducated to life. The whole matter of sex must be re-interpreted to her. To the credit of our institutions in this country we may say that in at least four of our state schools her problem would be understood and successful treatment carried out.

This change in the conception of what the reformatory should do for the delinquent is well stated by the same author as follows: ³⁰

1. Care, custody and discipline should be as nearly as may be, that which would be given by parents. Welfare of the child is the reason of the commitment.
2. Behavior of the child must be studied as a thing caused. Treatment, or adjustment, is a scientific process.
3. The child is an asset to the community and unless handicapped by irremediable mental or physical defect should be restored to the community.

If one were asked to sum up in a phrase the background idea of correctional institutions for girls in this country, it would be, not punishment, nor discipline, but "welfare, adjustment and education." The strictly modern institution is a

²⁹ Van Waters, "Where Girls Go Right," *The Survey Graphic*, Vol. I, June, 1922, p. 362.

³⁰ *Ibid.*, p. 362.

composite of school, home, workshop, hospital and laboratory, and its plant and entire atmosphere express its goal, as reëducation and the adjustment to normal life of the girl whose parents and whose community have failed her.

What are some of the results of these more recent experiments? Let the following stories of two such girls answer:⁸¹

Eve had spent seven years in state institutions. For several months she was in a school for the feeble-minded and was often confined in a straight-jacket. By merely rolling her eyes she could strike terror into the hearts of matrons. A new superintendent came to the state school. Eve is now in a city telegraph office in charge of an important division. The mystery? String beans. The new superintendent found the girl getting ready for a tantrum. She led her to the cellar where hundreds of rows of monotonous canned string beans were waiting the winter, and said, "Eve, I am dissatisfied with these vegetables; they are so ordinary, so poorly done; almost any canning factory could do as well," and the superintendent sketched her view of a state school as a vast center full of new industrial ideas and even beauty. Eve warmed to the project. Under her leadership glass jars replaced the cans, strips of red peppers alternated with the jade and ivory colors of the vegetables; there is undoubtedly poetry in vegetables and Eve realized it.

Helen, aged fifteen, had run away from three institutions, had bobbed her hair, wore boy's clothes, smoked, drank and beat her way on freight cars. She had an irresistible sense of the comic and she had gifted hands. In the Kansas State School she was set to making original dolls. She made them of cloth, of wood, and of paper. Their faces resembled those of the people she had met: porters, policemen, waiters, tramps, Japs, jugglers and matrons. She made rabbit dolls with human faces. Gradually as she sat day after day in her discipline room, for her language made segregation necessary, her dolls began to have a commercial value. She "found herself" and later when she was put in charge of a kitchen department her only gesture of independence was to hang a sign, which I am glad to state remained unmolested:

NO SLANG HERE: BY HECK

In spite of these gleams of intelligence by leaders in the handling of juveniles committed to institutions, and the introduction into a few such institutions of methods in accordance with modern educational, psychological, psychiatric, and sociological principles, on the whole institutions for juvenile delinquents, with a few marked exceptions, are characterized by inadequate plants, poorly equipped staffs, a depressing routine, a repressive rather than an inspiring and constructive attitude, a disregard of the help that an understanding of available knowledge concerning the roots of behavior would provide in guiding wayward children and youths into a socially approved way of life, and a prison-like atmosphere. This is a severe statement, but it is supported by two studies on such institutions.

A number of years ago (1922) Miriam van Waters reported on her study of thirty state training schools for girls.⁸² While she found here and there

⁸¹ *Ibid.*, p. 362.

⁸² *Ibid.*, pp. 362 ff.

an institution with certain features in line with modern educational, psychological, and sociological principles, there were but a few that could be approved without reservations. She found the beginning of the newer and more constructive practices in the treatment of delinquent juveniles, but on the whole the picture was a sad one.

More recently The Osborne Association has undertaken a thorough and systematic study of all such public institutions in the United States. Up to 1944 it reported its findings on only four sections of the United States—the West North Central, Kentucky and Tennessee, the Pacific Coast, and Virginia and North Carolina—in which there were thirty such institutions, out of a total of 109 in the whole country. One has only to read these reports to understand that in spite of the passage of nearly twenty years since Van Waters' study, while some progress has been made, the picture is discouragingly dark. Space does not permit any details in support of this statement, but any doubter is referred to these two studies for confirmation.

ESSENTIALS OF A JUVENILE REFORMATORY

Let us close this chapter by pointing out the essentials of an institution for the correction of juvenile delinquents. By inference some of the present evils will be clear. I know of no better formulation of the essential principles of such an institution than that provided by William B. Cox and Joseph A. Shelley, the editors of the report on the institutions in the Pacific Coast states. It is as follows: ³³

Presented herewith, in recapitulation of the introductory material and recommendations frequently made throughout the individual reports, are twenty-two major objectives which the Association in Volumes I and II of this Handbook stressed as policies and procedures which should dominate institutions for delinquent juveniles. These are summarized in propositional form, in the belief that they will serve as a guide to officials and citizens in working for more effective training schools:

(The order of the propositions corresponds to the order of topics in the introduction and not to their relative importance.)

1. Improved case study facilities in the juvenile courts and more adequate resources for taking care of dependent and defective children are necessary in order that non-delinquents, over-age students, and mental or emotional deviates may be excluded from training schools for normal, although delinquent juveniles.

2. Specific legislation stating that commitment to a training school does not constitute an official criminal record is desirable and the registration of students' fingerprints with bureaus of criminal identification should be discontinued.

3. The development and supervision of treatment and training programs are a responsibility of boards of control and a staff of trained personnel should be employed for this purpose.

³³ *Handbook of American Institutions for Delinquent Juveniles*, Vol. I, West North Central States (New York, 1938); Vol. II, Kentucky-Tennessee (New York, 1940); Vol. III, Pacific Coast States (New York, 1940), and Vol. IV, Virginia and North Carolina (New York, 1943). The quotation is taken from Vol. III, pp. 42-46.

4. Personnel administration should be improved by
 - (a) Non-political selection of personnel on the basis of objectively standardized qualifications.
 - (b) Systematic pre-service and in-service training.
 - (c) Making tenure of office depend on merit and not upon partisan affiliations.
 - (d) Higher salary scales.
 - (e) Systematic salary increases and promotions.
 - (f) Shorter hours of work.
 - (g) Better living conditions.
 - (h) Provisions for retirement on pension.
5. The administration of training schools must be free from domination by partisan politics.
6. Fire hazards should be diminished immediately and eventually eliminated by
 - (a) Maintaining fire patrols; insuring that every building has a sufficient number of accessible emergency exits; and holding frequent fire drills.
 - (b) Entering upon building programs which will replace antiquated and unsafe buildings by modern fireproof structures as soon as possible.
7. Plans for new housing units should emphasize small cottages and a high proportion of single rooms rather than dormitories. Each girls' cottage should have its own kitchen and dining room to increase the opportunities for training in domestic arts but central cafeterias are recommended for boys.
8. Careful attention must be given to preventing sex misconduct and programs of sex education under competent teachers, scheduled activities throughout the evenings until a reasonable bedtime, and civilian supervision in the dormitories at night are suggested as practical preventive measures.
9. Systematic classification work, including case studies and staff conferences to plan and direct individualized programs, should be instituted at all training schools.
10. Academic education should depart from the traditional, curriculum-centered pattern and adopt the principles and individualized methods of modern progressive education.
11. Systematic vocational guidance and education, under qualified personnel, should be an important part of the program at all training schools.
12. Suitable quarters and sufficient funds should be allocated for a library supervised by a trained librarian.
13. A plan of student government which permits the students to select representatives to cooperate with the authorities in planning and managing activities involving the welfare of the whole student body is a fundamental part of training for citizenship.
14. Recreation in a training school should foster relatively permanent, constructive, leisure time interests as well as provide healthful and stimulating day by day activity. This broad purpose requires the services of trained recreation leaders with vision and skill far beyond that needed to coach athletic teams.
15. The regular maintenance work of a training school, if it is systematically analyzed and organized for the purpose, can be a valuable medium of vocational training. The training possibilities of maintenance work should be exploited but not merely the labor of the boys and girls.
16. Training schools should provide sufficient competent medical and dental service to permit searching examinations of all students and to carry on prophy-

laxis and the correction of latent and chronic conditions as well as the treatment of acute illnesses.

17. Thoroughgoing individualized treatment and training for boys and girls of widely different backgrounds and personal characteristics require the services of psychologists, psychiatrists and trained social workers.

18. Corporal punishment, the use of handcuffs or shackles, and other out-moded penal practices should be entirely discontinued.

19. Every boy or girl in a training school should have opportunities to attend services of worship and to receive systematic instruction in a religious faith of his or her own choosing. Religious education related to daily experiences and personal counseling are important aspects of religious training.

20. Properly administered parole is the best method of effecting the transition from a training school to the community. The proper administration of parole must meet the following conditions:

- (a) Release on parole under favorable conditions must be kept as an objective from the day of commitment and finally accomplished as a normal step in the training process and without any fanfare which makes parole appear to be an act of special dispensation.
- (b) The precise time of an individual's parole must be determined by an expert appraisal of his or her preparation for community life and all the factors in the situation to which the student is being released. No fixed requirements in terms of time, credits earned, or school grades completed can take the place of competent judgments in the face of all the facts.
- (c) The institution or the supervising state agency must maintain a force of qualified and trained social workers in the field to make preparole investigations and to give close and skilled supervision to paroled students. The ratio of field workers to paroled students must be high enough to permit thorough preparole investigations in all cases and a minimum average of one visit at the home of every parolee per month.

21. A well integrated social work program in the community, an adequate number of trained probation officers in all courts, and complete social case histories are essential so that children who are not necessarily in need of institution treatment may be cared for without recourse to training school commitment.

22. It is essential that commitments to the training school be for indefinite periods rather than for definite "sentences" so that the institution may release the child on parole or placement whenever it believes that such action will benefit the child.

Among these essentials the officers of the institution are perhaps the most important. The superintendent who by example and wise talks can suggest new points of view, can subtly suggest rewards for good conduct, or can discover and play upon the elements of the child's better nature, can exercise a most helpful influence on the wayward boy or girl. Moreover, he can make good conduct contagious. Not only does he inspire the children with whom he comes in contact, but his influence and example touch to living flame the sometimes weary subordinate officer and teacher.

How a wise superintendent and his officers may by their personal in-

fluence and their organization of the mass attitudes in an institution for juveniles is shown by the following description of the treatment of Billy in an orphanage that has been very successful in handling some rather difficult delinquents. Billy, who had heart disease, came to the institution with a bottle of smelling-salts, a thermometer, and a bottle of medicine. He had developed a bad case of "enjoying his misery," a situation not confined to little boys. After a course intended to build him up physically the subject of school was broached as follows: ³⁴

The week before school reopened, he was called into the office.

"Now, sonny, ready to go to school?" he was asked.

His face, somewhat rounder now, and decidedly more healthy in appearance, took on one of his old-time tragic looks. "I'll get sick again," he threatened.

"We'll have to look out for that. But we also have to look out that you become a smart boy and learn how to read and write well, and get a chance to be a great man like your cousins, the doctor and the professor."

There was no answering gleam of ambition in his dark eyes. "I don't want to go to school," he said; "I want to stay home and play with the dogs and the bunnies."

"But the dogs and bunnies are not going to teach you how to read, write and count. What will you do when you grow up?"

"I'll keep a store, like the bird man on Broad Street, and have lots of animals," he replied.

"Then how about starting your store right now, by being allowed to go to the bird man and pick out an animal, all for yourself?"

His face flushed with joy and his eyes became bright. "Oh, can I?" he questioned eagerly.

"Yes. How much money have you in the bank?"

Greatly excited, he almost ran out of the office, and returned in breathless haste a moment later, with the pass-book issued to the depositors of the Children's Bank. "See! Here's my money!" he cried earnestly.

"How much is that?"

His face fell. "I—I don't know how—to make it out," he stammered in confusion.

"Then how will you know what to pay the bird man?" he was asked.

His eyes brightened. "I'll give him my bank book and tell him that's all the money I been saving since I came here, and tell him to take what he wants," he replied eagerly.

His faith in the bird man was evidently strong. "Suppose the bird man tells you that he would rather receive bills instead of the bank book for the dog, what will you do then?"

For a moment he looked puzzled, then nodded his head as if agreeing to the bright thought that had occurred to him. "I'll go to the bank and get the money and give it to the bird man of course," he stated.

"Let us suppose that the bank makes a mistake and gives you less money than you are entitled to—what then?"

"Do them banks make mistakes, too?" he queried, his eyes large in astonishment.

"Sometimes. You know you have to count the money you put into and draw out of the bank," he was informed.

³⁴ Drucker and Hexter, *op. cit.*, pp. 94-97. (Reprinted by special permission of Harvard University Press.)

"Ain't it funny that them bank men don't like school, just like me?" he remarked.

To avoid treading on dangerous ground, a question instead of an answer was given him.

"How are you going to know whether or not you receive the right amount of money your book calls for?"

He replied with a hopeless shrug of his thin shoulders.

The importance of attending school having been forced upon his consciousness he was finally permitted to go to the store, in charge of his monitor, who had provided himself with the necessary bills, to the boy's eager-eyed interest. Soon he returned, all smiles and happiness, hugging a tiny puppy under his coat, because, as he explained, "That big wind will make him catch his death of cold"; and he held out the squirming little creature with admiring affection. "J'ever see anything so bu-too-ful?" he cried in his ecstasy.

He also submitted the information, after his joy and pride in his "dog" had become more normal, that if it hadn't been for the monitor, he shouldn't have known how to purchase and pay for his pet; so he felt it incumbent upon him to heed the advice given him by the older boy, "to go to school and learn something."

In the months that followed, he learned many things, though very slowly and with apparent difficulty. His mental capacity was below his age, but he plodded along steadily and faithfully, presenting none of the delinquencies of his previous school record. His deportment was good, and he seemed desirous to keep up with the work of his class. As his health was still the first consideration, he was permitted to continue his slow progress in his school-work, no effort being made for more rapid progress.

Meanwhile, at the Home, his life was undergoing more radical and novel changes, which were to affect his habits and conduct till the metamorphosis of his character was completed. Mingling more freely with the boys, he became interested in boyish activities hitherto unknown to him, and actually began to enjoy the flying of a kite and a game of marbles. He even learned to emit a cheer, at first half-hearted and feeble, then strong and lusty, when his favorites excelled on the baseball diamond, forgetting to feel his heart for any after effects.

The smelling-salts were doomed when the boys started the derisive question, "How's the smeller, Billy?" A few days later, when the smelling-salts had not been in evidence, and speculations were rife concerning the hitherto ubiquitous bottle. Billy marched soberly into the office and very gravely put a small packet wrapped clumsily in newspaper on the desk. "I want to send them for my momma," he announced.

"What are they?"

"My smelling-salts for momma to smell, and my thermometer to take her temperature," he replied with a sad gravity, a doleful shake of the head.

"Why are you sending them to your mother? Don't you want them any more?" he was asked.

"I don't know," he replied thoughtfully. "My temperature is normal all the time—and—and the boys laugh at me." He brought out the last bravely, swallowing the lump in his throat manfully, though the tears stood in his eyes. "I—I—can't any more look in the looking-glass and stick my tongue out to see if it's coated—they make fun of me—so what's the use of them things?" he ended bitterly.

Asked how he felt since he had discarded the medicine, smelling-salts, and thermometer, he looked up and seemed for several moments to be thinking. Then, "I got a lot to do and sometimes haven't even time to see how my heart

is going," he answered, reproach in his voice. After which, he secured wrapping paper, and making a neat package of his medical paraphernalia, laboriously scrawled his sister's address thereon, and sent them to her, with the advice to "keep them for momma."

He continued to attend school for the next few years, and while his conduct presented no difficulties, his scholarship was only fair at its best, as his mental faculties remained sluggish. He was compelled to apply himself intently to a subject, and it was only by dint of extreme endeavor and frequent coaching that he was able to make his grades even as slowly as he did. His concentration was extremely poor, but his efforts were undeniably painstaking.

The boy's mind, though needing constant encouragement and assistance in its development, was not feeble, and later, it was noted, that, as his health improved, his mental faculties became brighter. As he grew more of a boy, and less of an invalid, he became more cheerful and was decidedly happier. His pets, of which he accumulated a fair number, assisted him greatly in acquiring a more normal aspect of life, as they took the important places the thermometer and smelling-salts had previously occupied in his mind.

In time, his face lost its tragic expression. While he remained delicate in appearance and in constitution, for nearly three years he had no real illness, and seemed fairly on the road to a normal boyhood. Gradually, also, he acquired a fondness for the manual training shops, in which he spent several hours every week, and became interested in the Boy Scout activities, in which he frequently participated. His happiness, however, lay in his fondness for his dumb pets, whom he loved and cared for with the utmost untiring devotion. The first book he himself read from cover to cover, and with complete enjoyment, was one dealing with animal life, and his ambition to have "a bird and all kinds of animals store" when he grew up persisted with him.

Such technique is characteristic of all good work with delinquent children.

Discipline. The problem is how to get the child to adapt himself to the circumstances of life with the least possible application of force. Matters must be so arranged that he conducts himself in accordance with the conventional standards because he wants to do so himself. While for some children at certain times in their training the authority of another, perhaps of an older, person must be exercised on them, and often they must be induced to a certain line of conduct by the fear of certain deprivation of privileges or the infliction of other pains, as soon as possible these should be displaced by social motives. Their conduct should be molded by the subtler methods of social control.

In unpleasing contrast to such methods of discipline it has been stated that in half of twenty-eight girls' reformatories studied recently flogging is still practised, especially for running away and for sex perversions. Punishment by taking away the food, or limiting it, was found remaining in two thirds of the twenty-eight. Solitary confinement as a method of discipline is also used in some. Some form of segregation or "meditation" is reported to be almost universal among these girls' institutions studied by Van Waters. There also remain other corporal punishments, such as cold-

water baths, drugs which cause vomiting, playing a stream of water from a fire-hose upon the disturber, and tying up. Says Van Waters: ⁸⁵

The offenses for which these punishments have been administered are for the most part simple: running away, refusal to work, impudence, passing notes, the smuggling in of candy, gum and cigarettes. Sometimes violence, fighting, obscene language, and perversions occur. In one institution the daily program of the group in punishment, some forty-five girls, or about 12 per cent of the population, was as follows: each occupied a small, barred room, the furniture of which consisted of a mattress, bedding, wash bowl and tin cup. At 7:00 A.M. the door was unlocked, and the girl permitted to wash and dress. Breakfast, consisting of bread and milk, was served and eaten in the room. From 8:00 till 11:00 the girl scrubbed and cleaned her room. From 11:00 to noon small squads of girls were taken from their rooms to polish the downstairs floors. In stockinged feet, on their hands and knees, they pushed a great polisher over the immaculate floor, while a matron counted aloud. This was the peak of the day, the only outside contact; and the girls, with cheerful, flushed faces, worked eagerly. At noon they were marched back to their rooms and dinner was served, soup and potatoes, or stew. At 5:30 P.M. milk and bread was served. Some of the girls had earned the privilege of carpet rags to sew. There was nothing else done through all the day. These girls had committed minor offenses, "sassing" chiefly. The serious offenses were punished by confinement in basement cells. Only one of the girls was there for the first time. The minimum length of stay in the discipline cottage was three weeks; if a girl was sent there a second time, an additional three weeks must be served. Seventy-five per cent had been there four times. Evidently the medicine was not working, but the doctor kept up the treatment.

Doubtless there are some unruly girls in these institutions who must be segregated. Mrs. Smith, formerly of the Texas State School, had a girl who was locked up in a room because of a tantrum. She at once set about smashing all the furniture and using the pieces as weapons of attack and defense. She was given a work bench and some tools when she quieted down, and she was grateful for the isolation and the means of useful activity. The psychopathic girl often causes trouble by her "spells." Maggie was psychopathic. She was born of two religious fanatics and at the age twelve was herself a famous "girl evangelist." She preached and went into trances. Then she became acquainted with a professional dancer and went on the stage. Because of her antisocial conduct she was sent to the State School at the age of fourteen. Here she set out to dominate the institution. She had emotional explosions when attempts were made to restrain her. As a result something like an attack of epilepsy developed. Many things were tried with her. The resourceful superintendent one day set up a tent in the yard, put Maggie there and told her that was her home. She took to it and proceeded to decorate it with the things she found in her walks. She caught a 'possum in the woods and built a house for it. After a night in which Maggie became the victim of her imagination and developed a terrific fear, Mrs. Smith had a fence built around

⁸⁵ Van Waters, *op. cit.*, pp. 374-375.

the tent, put a padlock on it and gave Maggie the key. The girl now was very happy. In many another institution she would have been severely disciplined. The solution is all in knowing how to adapt the treatment to the individual.⁸⁶

Some day we shall learn that there is a way to handle these difficult children without resort to physical force. We shall probably not learn how, however, until we shall have set about training officials, instead of selecting them because they need a job or are outworn school teachers, who can be hired cheaply, or have been politically useful.

Recreation. In the old institutions for juvenile delinquents play was usually repressed. Fortunately, modern knowledge has taught us better. Some of the most constructive methods in rehabilitation and training in our best institutions are to be found in the use of leisure time. Not only are there the ordinary games that children play and supervised athletics, but plays, pageants, folk dancing, musical entertainments, and commemorative festivals. A number of the institutions for these young delinquents have orchestras and glee clubs. Community singing has been introduced into many of them. In addition the boys and girls are organized into Boy Scouts troops, Girl Scouts, and Camp Fire organizations. In some of them, as at Samarcand in North Carolina, woodland hikes and camping trips are planned. While the institution does not endeavor to compete with the high-powered recreations to which many of the children have been accustomed and that in many cases have been concomitants of their delinquency, they attempt to provide recreations that are as interesting and much more constructive.⁸⁷

CONCLUSION

Our study of the institutions for juvenile delinquents indicates the necessity of such institutions. Not all delinquents need to have institutional life, but for some in a good training school lies the hope of their future.

The character of the institution and its usefulness depends almost entirely upon the qualities possessed by the superintendent and the members of the staff.

Every tendency in the best reformatories at this time indicates that such arrangements must be made in receiving the new inmates, in studying their characteristics and needs, and in directing their daily lives and activities that the treatment shall be adapted to each individual according to his needs.

Individualization implies necessarily the most careful case study of the individual as the basis of treatment. Reformation *en masse* is impossible in the case of the juvenile delinquent.

The treatment involves not only individualization with the play of a

⁸⁶ *Ibid.*, p. 375.

⁸⁷ *Ibid.*, p. 370.

wise and strong personality upon the juvenile but also the formation of ideals and conduct habits by the impress of group ideals, stimulus, and inhibition.

In the best institutional treatment of the delinquent, as well as in the after-care on parole and in the diagnosis of his difficulties, every resource of modern science is used. Psychology, psychiatry, sociology, with all they can teach of causation and technique of suggestion and stimulation of ideals, are kept clearly in mind.

QUESTIONS AND EXERCISES

1. Assume that you are superintendent of an institution to which is sent Polly S., described in Chapter XI. Describe in detail your treatment of her.
2. Describe in detail how you would handle Parker E., described in Chapter XII.
3. Outline the main essentials in a good juvenile reformatory.
4. Trace the early history of juvenile reformatories.
5. What unique features did Wells introduce into the first juvenile institution for delinquents in Massachusetts?
6. Analyze the essentials of a good juvenile reformatory and point out the evils that those essentials are intended to correct.
7. What personal characteristics and what training should an employee of such an institution have?
8. Read Chapter IX of the Gluecks' *Juvenile Delinquents Grown Up* and point out what characteristics and backgrounds a juvenile delinquent should have to warrant his being sent to a juvenile reformatory.

Chapter XXXI

MEN'S REFORMATORIES

Reformation was one of the purposes in the establishment of the American penitentiary system. While that purpose was subordinated frequently in the development of the American prison system, here and there a voice was raised emphasizing its importance. That the reformatory ideal was not dead with respect even to the prisons is shown by the first constitution of Ohio, adopted in 1802. This constitution says, "The true design of all punishments being to reform, not to exterminate mankind."¹

THE BACKGROUND OF AMERICAN REFORMATORIES

The results obtained in American prisons did not satisfy those who held to the ideal of reformation. An increasing number of them were dissatisfied. They began to plead for more specific attempts at the reformation of the delinquent. We are quite likely to think that the reformatory idea as developed at Elmira was an entirely new thing in America. For at least fifty years in America those who had been devoting thought to the subject of the treatment of convicts had been considering methods and devising means of effecting their reformation. It was over the question as to whether the Philadelphia or the Auburn system had the greater influence in reforming the man that the great debate swung both in America and Europe for so long a time. Furthermore, there was no such thing as parole or indeterminate sentence until the time of Elmira; there was only pardon by the governor. Whether the governor should pardon a prisoner was determined theoretically by the conclusion as to whether prison discipline had resulted in the reformation of the convict.²

The report of Maconochie's experiments in Norfolk Island with the transported prisoners from England had reached the United States and the so-called Crofton system in Ireland had excited the admiration of some American students of penology.

¹ Article VIII, Section XIV.

² Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, N. Y., 1922), p. 231; see also pp. 161-162. It is strange that their interest in reformation had not been stimulated by what they observed of the work of juvenile reformatories. These institutions excited great hopes, and one would expect that they naturally would lead to the question of applying the same principles to older delinquents. However, there is not a scintilla of evidence that the juvenile reformatories suggested the reformatory for adults. See Robinson, *Penology in the United States* (Philadelphia, 1921), p. 122, note 1.

In 1857 Ohio established what was called in the law the Ohio State Reform Farm, for any minor male under the age of eighteen who should "be found guilty of an offense or crime against the laws of the state." This institution ultimately became the Ohio Industrial School for Boys. However, at the beginning its inmates were made up of forty male youths selected from the House of Refuge at Cincinnati, the Ohio State penitentiary, and the county jails of the state.³

In 1865 Frank B. Sanborn, inspector of prisons in Massachusetts, advocated to the General Court of Massachusetts a system based upon the principles worked out by Maconochie and Crofton.

In 1868 the recently formed Board of State Charities of Ohio urged the legislature to establish, alongside of the penitentiary on the one hand and the Reform Farm on the other, what they called an intermediate prison for young men, thus giving them a system of graded prisons and providing opportunity for the adjustment of discipline adapted to the three different grades of prisoners. In their scheme transfers were to be made from one to the other, based upon the criminal's general character and conduct as determined by a careful series of marks. This recommendation, however, did not find fruition in the legislature of Ohio until 1885, nine years after New York State had opened the first adult reformatory in the United States.

In the declaration of principles adopted by the first Prison Congress in the United States at Cincinnati, Ohio, in 1870, reformation was recognized as the special purpose of punishment. "The treatment of criminals by society is for the protection of society. But since treatment is directed to the criminal rather than to the crime, its great object should be his moral regeneration. Hence the supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering."⁴

This important document also urged a progressive classification of criminals based on character and on some well-adjusted mark system. It suggested that "rewards, more than punishments, are essential to every good prison system." The prisoner's destiny should be placed measurably in his own hands. This document discussed the reformatory agencies: (1) religion; (2) education; (3) belief by the prison officers that men can be reformed; (4) ability to gain the good-will of the convict; (5) a generous parental attitude by prison officials toward the prisoners; (6) cultivation of the prisoner's self-respect instead of degradation; (7) the use of moral rather than physical force in prison administration; (8) "steady, active,

³ Barrows, *The Reformatory System in the United States; Reports Prepared for the International Prison Commission, Fifty-ninth Congress, First Session, Document No. 459* (Washington, D. C., 1910), pp. 173, 174. See also McKelvey, *American Prisons* (Chicago, 1936), pp. 59, 60; Barnes and Teeters, *New Horizons in Criminology* (New York, 1943), pp. 547-551.

⁴ This declaration of principles is to be found in Henderson, *Prison Reform and the Criminal Law* (New York, 1910), pp. 39-63. This is one of four volumes on prevention and correction prepared for the Eighth International Prison Congress and published by the Russell Sage Foundation.

honorable labor"; (9) the adoption of the most valuable parts of the Irish prison system, including "the more strictly penal state of separate imprisonment, the reformatory stage of progressive classification, and the probationary period of natural training"; (10) classification and grading of prisoners; and (11) abolition of the short sentence.⁵ This declaration of principles was the work of a committee composed of Wines, Frank Sanborn, and Brockway.⁶

THE ORIGIN OF AMERICAN REFORMATORIES

The New York State Reformatory. Wines in 1862 had become the secretary of the New York Prison Association. This association became the agency through which public sentiment was created in favor of the first reformatory in the United States for adult males. The law was passed in 1869, and the institution was opened in 1876. The first superintendent and organizer of the institution was Brockway. Brockway had been trained in prison work under Amos Pilsbury, one of the most distinguished prison wardens America has ever produced, both at the Connecticut State Prison at Wethersfield and also at the Albany County Penitentiary at Albany, N. Y. Following this training he had been very successful as head of the Rochester, New York, County Penitentiary and still later had developed some very advanced methods of treating prisoners at the Detroit, Michigan, House of Correction.⁷ It was Brockway who drafted the bill providing for the organization of the reformatory. This plan was approved practically in the form in which it was drafted.

The essential points in the act under which the New York Reformatory was organized are:

1. Limited to prisoners between sixteen and thirty years of age convicted for the first time
2. The limited indeterminate sentence⁸
3. A classification or grading of the prisoners
4. A marking system similar to that used by Maconochie and Crofton, providing credits to be earned by the prisoner as a condition of increased privileges or of release from control based upon good behavior, diligence in labor and study, and results accomplished; and debits for derelictions, negligences, and offenses
5. Parole based upon the marking system and upon a reasonable probability of the prisoner's good behavior if released

⁵ Henderson, *op. cit.*, pp. 39-45.

⁶ *Ibid.*, p. 78.

⁷ Brockway, *Fifty Years of Prison Service* (New York, 1912), Chs. 2-6.

⁸ In the original draft of the bill Brockway had an absolute indeterminate sentence, but fearful that this would not receive the approval of the legislature, the evening before it was presented he added a limitation that the sentence should not be extended beyond the maximum term provided by law for the crime for which the prisoner was convicted and sentenced. Henderson, *Penal and Reformatory Institutions* (New York, 1910), p. 94.

In addition to those elements provided for in the organic law, the management as experience suggested changes established in addition the four following features in conformity with the purpose of the reformatory:

6. Physical training
7. Military training
8. School of Letters
9. School of Trades

GROWTH OF THE REFORMATORY MOVEMENT

The establishment of the New York Reformatory created a great deal of comment both at home and abroad. The establishment of reformatories by other states however, did not take place rapidly for twenty or twenty-five years. By 1943, however, there were twenty-seven adult reformatories for men including three federal and one in the District of Columbia in twenty-one different states.⁹

This program was hailed as marking a great advance; and it did. Consider that most prisons at that time were places of punishment, conducted so as to break the inmate's spirit and to get out of him as much labor as possible. There was little if any classification in the prisons; old and young, first offenders and hardened offenders were mingled indiscriminately together. The country had had its energies and its funds absorbed for four years in the War Between the States. It had been through one of the most terrible economic depressions in its history (1871-1875). It is to the lasting glory of New York State that under those conditions its legislators voted the funds to establish an entirely new type of institution for law breakers.

But after a time the fine enthusiasm that produced Elmira and a few other similar institutions oozed away. The leaders in the movement grew old and retired or died or became complacent and failed to improve the system. The men who headed the reformatories in other states often were men who had been trained in the repressive prison régime. No one of influence in the field of penology, like the men responsible for Elmira, was traveling the world around to discover new methods and reporting back to the penologists of this country on their findings. As a consequence after a short time most of the men's reformatories became only junior prisons with the form but without the spirit of a real reformatory.

But the last twenty years has seen the beginning of a change. It began to dawn upon one here and one there that something other than the separation of young from old offenders; than the grading system; than the marking system; than physical and military training; than a school system modeled upon the public schools, against which many of these prisoners had a grudge already and in which they had failed; than vocational training based upon no systematic study of the man and without connection with any living reality provided by producing something useful; than moral education by exhortation in mass without some knowledge

⁹ *Social Work Year Book*: 1943 (New York, 1944), p. 40.

of each individual's difficulties, is necessary if young men are to be oriented to the real world to which they return. Fortunately in the last few years the leaders in this field have been asking questions about the efficacy of the system. Critical questions are always a sign of life. But only here and there have radical changes been actually made. The authorities in New York State became concerned about the situation in Elmira. The Lewisohn report sharply criticized the program, and the Commission set up an entirely new program based upon individual rather than mass treatment. As a result the whole program of treatment at that historic institution was transformed with the result that to-day it again ranks among the leaders in the field along with the United States Reformatory at Chillicothe, Ohio, and the New Jersey Reformatory at Annandale.¹⁰

By 1936 the educational program at the Elmira Reformatory had as its primary objective "that of contributing directly to the whole program of developing social adequacy on the part of the individual inmate." "Social adequacy, in terms of the Elmira philosophy, is defined to embrace social skills including vocational skills, proper social attitudes, understandings and appreciations, culminating in abilities and desires to adjust to present and changing social situations."

The inmates are no longer divided into school grades as was formerly the case, but into seven groups. The following description of the program by those responsible for it will best serve to indicate its nature.¹¹

First, the special class for the illiterate, near illiterate and near feeble-minded. In this group the essentials of reading and arithmetic fundamentals with instruction in simple social concepts are emphasized. This work is supplemented by suitable occupational training.

Second, the special class for the emotionally unstable. This group is not only separated for the purpose of instruction but is isolated from the general population almost completely in order to simplify the environment. The instruction consists of creative occupational therapy supplemented by a study of such social and literary material as is well within the intellectual range, interest and social needs of the individual members of the group.

Third, the class in applied agriculture for the boys who have come from the farms and who expect to return to farm work. One-half of each day is devoted to the study of problems of soils, crops, fertilizers, care and feeding of animals and farm management. Special studies are made in dairying and poultry farming by those interested. The other half day for this group is devoted to shop activities called "farm mechanics" which consists of a rotation among seven different

¹⁰ *A Preliminary Report on an Educational Project at Elmira Reformatory*, A Special Report by Commission to Investigate Prison Administration and Construction, Presented to the Legislature of the State of New York, Feb., 1933. For a brief notice of the institution at Annandale, N. J., see Healy and Alper, *Criminal Youth and the Borstal System* (New York, 1941), pp. 39, 49, 237; *Handbook of American Prisons and Reformatories*, The Osborne Association, Inc. (New York, 1933), pp. 524-544. For Chillicothe see *Progress in Prison, A Survey of the Activities and Aims of the Correction-Institutions Administered by the United States Bureau of Prisons*, U. S. Bureau of Prisons (Washington, D. C., 1942), pp. 36-40.

¹¹ *The Educational Program at the Elmira Reformatory* (Elmira, N. Y., July, 1936), pp. 4-9.

shops, viz: carpentry, plumbing, auto mechanics, painting, electricity, sheet metal and forging. In these shops the instruction consists of construction and repair problems related to farm work. After this shop rotation is completed these men are assigned to work on the institution farm, but the related instruction continues.

Fourth, commercial and business classes. Usually the men assigned to this work are those in the higher intelligence levels and also those with low mechanical aptitude. The course consists of the usual typing, shorthand, bookkeeping and accountancy, commercial arithmetic, commercial law, business science, salesmanship and business English. This is a full day course.

Fifth, trade shop groups. The trade instruction ranges all the way from the highly technical work of the electrician through the artistic work of the sign painter and printer to the purely manipulative work of the shoe maker. Organized vocational instruction is offered in twenty-one crafts. Related drawing for a minimum of three hours per week is required of all men in the mechanical trades. Three hours per day are devoted to shop work and trade drawing and the other half day is spent in the academic school following a program of related mathematics, related science and theory, English, social studies, health and current events.

Sixth, commercial art and painting group. While the function of this instruction is to prepare the inmate for some type of work in the commercial field, yet opportunity is given for creative work in the fine arts for those having special talent. The class is also open on a single period a day basis for those who are not specializing but who will profit by cultivating this means of expression. For all others the assignment is for a three-hour period each day.

Seventh, Regents' subjects group in high school work. This consists of a relatively small number of men who contemplate returning to high school, either as day or evening students and are therefore desirous of earning credits. The State Education Department co-operates fully in this endeavor and examinations are given twice each year.

All men who receive trade instruction on a half-day basis are required to spend the other half day in applied technical subjects such as trade theory, science and mathematics and certain non-related subjects having high social education values. The men are assigned to the technical classes on a unit shop basis so far as possible in order to promote the direct application of the problems to the particular shop work. This not only adds greatly to the interest but facilitates the learning. A typical program by hours for a week follows:

Shop Work	12
Drafting	3
Applied science, theory and mathematics..	6
Social Studies	3
English (oral, written or literature)	2
Current Events	1
Health	1
Total	<hr/> 28

In the non-technical trades general science may be substituted for applied science and social arithmetic for applied mathematics. There is also the possibility of substituting music or music appreciation, art work or a commercial subject in any program in cases where it appears that the best interests of the inmate is served by such a substitution. Opportunity for *religious instruction* is open to all men one period each week. Attendance is optional. These classes are conducted by the institution chaplains.

In addition to the activities already mentioned each inmate spends a minimum of two hours per week in games at the gymnasium or on the athletic field and one hour each day in military drill (not taken out of school time). Instruction is provided in music for those who are interested and have talent. Rehearsals of bands, orchestras and singing groups, as well as dramatic and discussion clubs are in progress throughout the day and evening. *Public entertainments* are given frequently by these groups both before the inmate population and the outside public.

As an outgrowth of the recreational program has come the schedule of *extra-mural contests* where the Reformatory has been host to a large number of independent, high school and Civilian Conservation Camp teams, in all cases showing very exceptional skill but also, what is more important, splendid sportsmanship. An outstanding event of the year so far as outside relationships is concerned was also a direct outgrowth of the recreational program. This was a *formal debate with the University of Buffalo* held before the inmate population of the Reformatory.

The principal method of instruction in the academic school is described as directed learning from the problem approach. The particular device is the individual guide sheet which states the objective, the problem and an introduction to the material which is available either in the room or the school library. The readings are then followed by the student reaction in writing or oral discussion. Class discussions are frequently held for their socializing value. The *problems are selected*, as indicated earlier in this report, for their functional value from the viewpoint of developing social adequacy through proper attitudes, understandings and appreciations. *No emphasis is placed on formal academic learning as such* except in cases where inmates manifest a real intellectual interest. Such an interest is then encouraged.

The method of instruction in the shops combines the instructor demonstration with the job operation and information sheet. All shop men have prepared such instruction material covering the major divisions of their trades. They also have progress charts, based upon trade analyses, upon which the progress of each inmate is indicated. Much of the shop instruction is *organized around the maintenance needs of the institution*. This provides the very best type of training, in that it must be purposeful and practical. This work of course is also supplemented by the informational and technical courses. The practice is also still in vogue of taking certain of the men who have been through a shop course and assigning them to the maintenance mechanics as helpers. This serves to broaden the training and is highly advantageous.

Different kinds of *visual aids* are employed in the shops and class rooms for the purpose of making the instruction more interesting and comprehensible. This material consists of models, sketches and photographs, graphs and charts, industrial bulletins, commercial exhibits, and motion and still pictures.

The Reformatory maintains two *libraries*. One is centrally located and from this *magazines and novels* principally are distributed. The circulation from this central library averages about one hundred twenty-five books per day. The other is at the school and consists in the main of *reference books and materials* which are used in connection with the daily work program of the school group. A small *special subject library* has also been built up in each class room. This has been quite necessary in order to carry on the extensive reference reading type of instruction. About eight hundred books have been added for this purpose within the past few months. In addition large quantities of Federal and State department bulletins and pamphlet material from educational foundations and universities have been added and have been found to be extremely helpful.

The *work of guidance and counseling* has been developed to the point where

it is one of the most significant services at the institution. The term "guidance," as describing a social function, is no longer restricted to its vocational and educational phases but is being extended to include the whole range of social relationship and personal problems. Hence its very vital connection with a program which sets up the development of "social adequacy" as its principal objective.

The guidance work begins intensively during the period of one month while the new inmate is held in the clinic. During this period he is given a very thorough physical examination, disabilities noted and so far as possible corrected. Where they cannot be corrected they are taken into account in the planning of the individual program. An extensive case history is prepared which may define more clearly the problem of rehabilitation and indicate a program of treatment. A very complete battery of intelligence tests, achievement tests, performance and mechanical ability tests, and personality tests is given. This procedure gives a fairly complete picture of potentialities and disabilities. The inmate is interviewed by the psychiatrist, his personality difficulties analyzed and a prognosis made. He is interviewed by the superintendent or assistant superintendent, by the director of education, by his chaplain and by the director of vocational education all with a view of getting an understanding of the man's difficulties, and of helping the man to get a clear insight into his own problems. He is given descriptive material on all the vocational training opportunities offered, and is taken on a tour of the schools so that he may know more of the exact nature of the offerings. He then comes before a final clinic composed of the superintendent or assistant superintendent, the psychiatrist, the psychologist, the chaplains, the disciplinarian, and the director of education, at which time a tentative program is agreed upon. As the inmate then goes into the general population frequent reports on progress and adjustment are required. Opportunities for individual conferences with any member of the staff still exist. Also the inmate may be called in for conference by any staff member if poor adjustment is being made. And when the inmate goes to the school he meets instructors who recognize as their primary function the rendering of assistance in the general program of rehabilitating the individual and appreciate the relationship of individual guidance to that procedure.

It may be said then that in all respects *the guidance program at the Reformatory is far in advance of any except that in the most progressive public school systems.* The problem is attacked scientifically.

The whole educational program seems to be well integrated and coordinated within itself and also to be perfectly articulated with the other departments in the general administration. There seems to be a very definite understanding of the objectives of the program on the part of the entire personnel and not only an understanding but a manifest desire to cooperate. This is due primarily to proper administrative leadership at the head of the institution but also is influenced by the direct attempt to bring about this understanding and relationship through personnel training.

This rather extended description of the new program at Elmira is given in order that you may appreciate the kind of modern program some of the men's adult reformatories are adopting. It is readily seen that it rests upon the latest scientific knowledge in psychology, psychiatry, sociology, medicine, and pedagogy. Frankly it is experimental, but the original reformatory was an experiment. These modern experimental methods are signs that people with imagination and knowledge are once more seeking better methods of correcting the behavior of wayward youth.

RESULTS IN THE UNITED STATES

Like every new invention for the better treatment of delinquents, the Elmira Reformatory and the ideas back of it early were hailed with great hope. In the early years of its history there was a tendency to claim an extraordinary percentage of reformation. As high as 85 to 90 per cent were the estimates given early in the history of the institution.¹² But with more careful study these high estimates of success have suffered diminution. The early high figures were for only a year or for those who had violated parole during a year after they were out, or were based on the assumption that if the institution had not learned that they had violated the law they must be going "straight," or any number of assumptions favorable to a report of success.

The latest and most careful study of the after-careers of reformatory inmates has been made by Sheldon and Eleanor Glueck. They studied 510 former inmates of the Massachusetts reformatory. Five years after their discharge 80 per cent of them were unreformed, as shown by the fact that they had committed criminal acts during that period. They have followed up these former inmates of the Massachusetts reformatory with two other studies, one at the end of ten years after their release from the reformatory and the other at the end of fifteen years. There was a steady increase of non-delinquency from 19.9 per cent at the end of five years, to 30.1 per cent at the end of ten years, and to 30.8 per cent at the end of fifteen years, with 41.8 per cent in the fifth year of the third period studied. Of those who had not reformed over the fifteen-year period, 28.9 per cent had become minor offenders. Over the fifteen years 33.5 per cent had reformed entirely. What part their reformatory experience had in these results no one is able to say. Age and post-reformatory experiences probably had much to do with their careers.

These studies by the Gluecks show clearly that individuals differ decidedly in the way they respond to different forms of correctional treatment. Some do well on probation who do not adjust well to institutional life, whereas some adjust well to an institutional régime who do not do well on probation or parole.¹³ This means that up to the present some are sent to reformatories who should have been put on probation, and others instead of being given probation should have been sent to an institution. Furthermore, because of the limits on sentences and on parole some are released from the institution at expiration of sentence or are placed on parole before the institution had been able to do its

¹² Brockway in 1910 estimated that during the seventeen-year period after the opening of the reformatory, 81.9 per cent had not returned to crime. However, he points out that of the 3,723 upon which this 81.9 per cent is based, 475 were either discharged at the expiration of sentence or were sent out of the state. He estimates that these are doing well, although he has no evidence to prove it. *Op. cit.*, pp. 325, 326.

¹³ Glueck and Glueck, *500 Criminal Careers* (New York, 1930); *Later Criminal Careers* (New York, 1937); *Criminal Careers in Retrospect* (New York, 1943).

utmost for them, with the hope that free life under supervision would help to prepare them for discharge into free society better than keeping them in the institution until they had served their entire sentences, and then thrusting them out into the world without the help of a parole officer. For the failure of those who should not have been sent to them in the first place the reformatories should not be blamed, nor for those whom they could not keep long enough to do their utmost for them. The Youth Correction Authority Act, to be described later, is intended to correct such difficulties, as well as some which now inhere in the conduct of these institutions.

But experience has shown that the high hopes early entertained for the reformatories were based upon false premises. The methods used in handling these offenders, while often some improvement on those employed in the prisons, yet were accompanied by too many of the features of repressive prison régimes. They were based upon an imperfect psychology and sociology. They ceased to be experimental. They ignored too often the newer discoveries in the physical, mental, economic, and social sciences. Like the prisons they tended to handle the inmates in masses. The plants too often were walled; the inmates were regimented; initiative was smothered in minute regulations; and worst of all the official personnel was politically appointed or if selected under civil service was lacking in either native ability or trained understanding in the motivation of conduct.

To-day methods based upon a careful study of each individual inmate in the hands of competent officials, in line with the latest scientific knowledge of the springs of human behavior and implemented with a plant and a program adapted to change the outlook and desires of those who are sent to them, are being introduced into some reformatories. The Prison Bureau of the United States and the administrative boards of some of the states have begun to use such methods. The experiments at Annandale, N. J., and at the New York Reformatory at Elmira, the setting up of institutions for inmates transferred from the prisons, like those at Wallkill, N. Y., and Chino, Cal., and the correctional institutions of the United States Prison Bureau are leading the way.¹⁴

Perhaps the most important outcome of experiment with adult reformatories for males is that the methods applicable to young and supposedly first offenders are those that can most hopefully applied to the inmates of prisons. The reformatory theory and aim, now stated not in terms of "reforming," but as preparing for life in free society, has now been adopted in penological thought for the prisons as well as for the reformatories.¹⁵

¹⁴ See references in footnote 10 *ante*.

¹⁵ Keller, Sheehy, and Loos. *The Guidance Program*, Ch. V of *Correctional Education Today* (West Coxsackie, N. Y., undated).

THE BORSTAL SYSTEM IN ENGLAND

In England there is nothing exactly corresponding to our reformatories for adults either male or female. As we have seen in a previous chapter, they handle the young juvenile offender in a somewhat different way. They likewise have a different system for the older young offender. The Borstal system is provided for what they call "the juvenile-adult." By that term they mean a selected group of those between the ages of sixteen and twenty-three.¹⁶

The system falls into two parts: (1) Borstal institutions in which young offenders between sixteen and twenty-three are given industrial training and other instruction and are subject to such disciplinary and moral influences as will conduce to their restoration and to the prevention of crime; (2) the Borstal Association, a quasi-official body subsidized by the National Treasury, which gives after-care to boys and girls released from the Borstal institutions.¹⁷ The Borstal institutions constitute a half-way house between the prison and the methods used with juveniles. These institutions are under direct government management. They receive the young adults for a period of not less than two nor more than four years. They also have a system of parole much as Elmira. The striking difference is that no one is kept more than four years.

This system was adopted in England as late as 1909 and has been modified in certain respects by more recent acts. It is so named because the first institution used for this purpose was located in the village of Borstal, where an old convict prison was transformed into a reformatory.

These institutions receive those: (1) between the ages of sixteen and twenty-three who are convicted on indictment of an offense for which they are liable to be sentenced to penal servitude or imprisonment, or (2) who are summarily convicted and remanded to quarter sessions for an offense for which the court has the power to impose a sentence of imprisonment for one month or upwards without the option of a fine, and previously convicted of an offense or guilty of breaking the terms of a probation order; those of criminal habits or tendencies, or those who were the associates of persons of bad character. Thus it appears that Borstal institutions are not intended merely for first offenders, as with our adult reformatories, but for young hooligans who appear to the judges and to the Prison Commission to be material that may with the proper treatment in the Borsals be turned from a criminal habit to a law-abiding way of life. Male offenders may be released on what we call parole after six months' detention and females after three months.

¹⁶ For the origin of the Borstal System in England see Ruggles-Brise, *The English Prison System* (London, 1921), Ch. VIII; Healy and Alper, *Criminal Youth and the Borstal System* (New York, 1941), Ch. V; Barman, *The English Borstal System* (London, 1934), Ch. V.

¹⁷ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p. 410; Healy and Alper, *op. cit.*, Ch. XIV.

The institution in England has been criticized in that the vocational training of the delinquent youth is interfered with by the fact that the reformatory schools for those under sixteen cannot keep the inmates after they are nineteen and the Borstal institutions cannot take them until they are sixteen. The period during which vocational training should be acquired is thus split up by two sets of institutions, with the result that neither can thoroughly teach any inmate a trade, even though he be sentenced to the maximum term.

Again, it is generally admitted that chronological age as a measurement of physical and mental development is unreliable. It is estimated that fully 20 per cent of the cases sent to the Borstal institutions are border-line defectives with an average mental age of from thirteen to fourteen years.

Furthermore, only those of a character, state of health, and mental condition such that the offender is likely to profit by the instruction and discipline of the institution can be admitted. Consequently those with physical defects—the crippled, the tubercular, the epileptic, and those with defective hearts—cannot be received into the Borstal institutions.

Moreover, the institution is too new in the English correctional system to have established itself thoroughly in the minds of the committing magistrates. Frequently, therefore, lads over sixteen are often sent to prison when they should go to the Borstal institution. In addition to this fact, most of the offenders sent to the Borstal institutions are at first detained for some time in local prisons, with the result that they are contaminated by association with adult offenders.¹⁸ This has led to the development in the prisons of a special juvenile adult class.

There are ten Borstal institutions in England, nine for boys and one for girls. Experience and the advance of knowledge in psychology and psychiatry led the English authorities in charge to provide for a careful study of the boys and girls committed to these institutions. Hence in the local prison of Wormwood Scrubs near London a separate department was established as a reception prison for the Borstal boys. In 1939 this department was transferred to the Borstal institution at Feltham. Here the boys are studied physically, mentally, and socially in order to determine what kind of training they should have and to which of the nine Borstal institutions they should be sent. Social workers have prolonged interviews with each lad, investigate his history, and visit his home in all cases where it is possible.¹⁹

When I visited these institutions in 1928, the three institutions for boys were those at Feltham, Borstal, and Portland.²⁰ Since that time six more have been added. The authorities in charge have provided for the classi-

¹⁸ Hobhouse and Brockway, *op. cit.*, pp. 410-415.

¹⁹ Gillin, *Taming the Criminal* (New York, 1931), p. 231; Healy and Alper, *op. cit.*, Ch. VI.

²⁰ For details concerning each of the institutions see Healy and Alper, *op. cit.*, Chs. XII, XIII.

fication of Borstal inmates by institutions in order to have in each place a homogeneous group. Thus the treatment can better be individualized. To which institution a boy will be sent is determined, not by the court, but by the authorities after he has been thoroughly studied at the receiving station at Feltham. A part of the old prison at Aylesbury was turned into the Borstal institution for girls.

In the institutions for boys there are five grades, although if the stay in the department at Wormwood Scrubs (later Feltham) be counted and release to the Borstal Association be included, there are seven. After having been studied in the receiving institution at Feltham the boy is sent to the Borstal institution best suited to his needs. There he enters into the first or ordinary stage for three months, or longer if his conduct does not warrant promotion. Then he goes into the second grade for three months, and so on in each case. The fourth grade is called the probation grade. Here he has much greater liberty. Above that is a special grade in which again greater liberty is allowed until he is discharged. If, when let out on parole, he does not do well, he is not returned to the Borstal institutions but is sent to a department at Wandsworth Prison.²¹

In each of the institutions the population is divided into small groups who live and work together in intimate contact with the official personnel. Frequent conferences are held with each inmate, and often the personnel works along with the boys. Thus understanding of each individual is obtained and personal influence is exerted by those in charge. In each house of a Borstal institution there is a housemaster and a matron. In some of them the inmates of each house are divided into small groups with a monitor, a senior boy, at the head. In some a degree of self-government obtains, consisting of a council, which discusses and presents suggestions to the management.

The official personnel are not in uniform but in civilian clothes. Over the years a specially selected personnel has been trained with one end in view, to understand and develop each boy for his release into free society. The quality of the personnel is the explanation of whatever success the Borstal experiment may have had.

Another important feature of the Borstal system is the work of the Borstal Association. It undertakes to supervise those granted parole and to follow up the boys after they have been discharged from their sentences. It is a private association but subsidized by Parliament to about nine-tenths of its budget of \$600,000 per year. Its personnel is partly paid and partly volunteer, but close connection is kept between its work and that of the Borstal institutions.²²

²¹ *Ibid.*, pp. 179, 180.

²² *Report of the Commissioners of Prisons and the Directors of Convict Prisons, 1938*, pp. 21-24. See also Hobhouse and Brockway, *op. cit.*, Ch. XXVI; and Brockway, *A New Way with Crime*, Ch. VIII; Healy and Alper, *op. cit.*, Chs. X, XI, XIV, XV.

Results. The same prejudices against the good influences of the Borstal institutions are to be found in England as are current in certain circles in the United States with respect to the reformatories, and for the same reasons, namely, that the successes are seldom heard from, while the failures are widely advertised.

It is difficult to give exact figures as to the success of the Borstal system. The latest released by the Prison Commissioners, under which the Borstal system operates, are those from their report of 1939. These show that of those discharged in 1934, five years previous to the report, 58.2 per cent; of those discharged in 1935, 62.5 per cent; and of those discharged in 1939, 70.2 per cent had not been reconvicted. If we compare the figure for 1934, a five-year period since discharge, of 58.2 per cent, with those of the Glueck's study of 21.1 per cent of successes by parolees from the Massachusetts' Reformatory for a similar period since discharge, it is clear that the Borstal experience gives about two and one-half times as good results.²³ Of course one must remember that such a comparison is inexact because of the difference in a number of variables other than the system used in each country.

The percentage of successes seems to be larger for the young delinquents than for the older, as is shown by the fact that while those who are sent to the Borstal institutions under seventeen average 82.6 per cent doing well, those committed between twenty and twenty-one years of age show only 63.4 per cent doing well.²⁴

The Reformatory in Continental Europe. In our sense of the term, Continental Europe has developed no reformatories for men. The penologists of those countries were not ignorant of the work at Elmira. Reports on Elmira were made at international congresses. Some were influenced by them.²⁵ But may not the advocacy of the Elmira plan by Lombroso, the founder of the Italian "Positive" school of criminology, then and for years afterward violently opposed by the penologists of other schools, have prevented a hospitable reception on the part of European leaders in penology? It is certain that except here and their little was done in the way of separate treatment of the young adult first offender. Europe attacked the problem later in her own way. France built separate institutions for this class of offenders. Perhaps the most famous is that at Fresnes. Here each prisoner works in isolation, as in the old Pennsylvania prison. When they are out of their cells the prisoners don canvas face-masks in order that none may recognize his fellows. In chapel each man occupies a separate enclosed cell.

Germany before World War II had in some of the states separate institutions for first offenders, but in the smaller states the separation was attempted in the same institution.

²³ Healy and Alper, *op. cit.*, pp. 223-225; Glueck and Glueck, *500 Criminal Careers*.

²⁴ Healy and Alper, *op. cit.*, p. 222.

²⁵ Gillin, *Taming the Criminal*, pp. 166-168.

Bolshevik Russia ignores the classification by youth and number of convictions, except as these factors throw light upon the individual's danger to society. Her classification is upon an entirely different basis.

CONTRIBUTIONS OF REFORMATORIES TO PENOLOGY

A number of very valuable lessons have been learned from the experiment with reformatories in the United States.

1. The classification by age and number of convictions is an unscientific classification in that it rests on no sound theory as to the nature of the criminal or the results of experiment. The recent discoveries in psychology and psychiatry and an understanding of the relationships between physical and social conditions and conduct have made clear that any classification and differentiation of treatment must be based, not upon the crime they committed, the number of times they have offended, or the age, but upon the nature of the man himself, determined by physical, mental, and social criteria.

2. The value of even the limited indeterminate sentence and of parole has been made so evident by this experiment that both these methods have now been introduced into prisons as well as reformatories.

3. Education of the proper character is as much needed for the inmates of prisons as the inmates of reformatories. This education must be such as will prepare one as adequately as possible for free life. The education of prisoners is a problem of adult education differing only from other adult education in that it should be adapted to the particular types of men to be found among prisoners.

4. The somewhat softened disciplinary methods introduced first into the reformatories have shown that the savage discipline of Elam Lynds and similar wardens is unnecessary.

5. All prisoners, of whatever age or character, should be handled by a single authority within the state. There is no reason why the reformatory inmates should be handled by an authority different from the one that handles the prison inmates. Since there is no sound principle upon which we should separate the treatment of reformatory inmates and inmates of a prison, there is no reason why a unified authority within a state should not supplant other methods of control.

6. The best of them meet a need that ordinary penal institutions have not met. They attempt to teach their inmates trades, to give them an elementary education, to bring to bear upon them moral influences, and to train them for good citizenship. The poorest are only another type of prison masquerading under a new name.

7. Where they have failed, it has been owing (a) to the attempt to apply the same methods to all classes of delinquents no matter what the differences in individual character; (b) to the attempt to change habit by mass treatment rather than by adaptation of methods suited to each individual; (c) to the maximum limit of the sentence; (d) to

the character of the personnel; and (e) to the limits set by law on the parole period.

8. The experience of the reformatories has demonstrated the value of an indefinite sentence. They have shown that there is no danger that the correctional institutions will keep the men longer than is demanded by the safety of society. Their experience has unquestionably shown that the limited sentence compels the discharge of some men who are not fit for free society.

9. The history of the reformatories has shown that parole, carefully administered, has value in the rehabilitation of the offender who has been properly trained and who has such qualities of mind and character that he can safely be released, but that an indefinite term of parole is necessary to secure the best results.

10. They have influenced the ideals and methods in many prisons. Says Leonard of the Ohio Reformatory on this point:²⁶

The success attained by reformatories through the adoption of humane and educative methods has resulted throughout the country in a modification of disciplinary methods in the old line or ordinary prisons. In fact, the administrations of some of the prisons classed as state penitentiaries have gone so far in this direction that they surpass in reformatory value some of the more conservative so-called reformatories. The effect of the success of the reformatory methods has been even more influential in modifying public opinion and the attitude of the average man and woman toward prison administration. A quickened conscience and aroused public sentiment growing out of this agitation find expression in probation laws, juvenile courts, and other methods of reclamation of children and delinquent youth.

11. They have stimulated the legal provisions for suspended sentence and probation, which save large numbers of offenders from the stigma of an institution sentence.

12. They have shown the necessity of treating delinquents both in the institution and on parole on the basis of a thorough study of their social history and of their physical and mental characteristics.

13. Experience with the reformatory has shown clearly that prisoners should be classified and segregated, not on the basis of kind of offense, number of convictions, or even age, but on the basis of the nature and personality of the individual as determined by physical, mental, and social investigations.

14. The experience of the reformatories has also raised the question as to whether the law should state what treatment should be given an offender or whether that should not rather be determined by a board of experts in psychiatry and sociology, while the function of the law should be to define criminality and define the functions of the board.

15. It also suggests that possibly the function of the court is merely

²⁶ Leonard, "Reformatory Methods and Results," in Henderson, *Penal and Reformatory Institutions*, pp. 127-128.

to determine the question as to whether a given individual has committed the crime with which he is charged.

THE YOUTH CORRECTION AUTHORITY ACT

The Youth Correction Authority Act, formulated by the American Law Institute, is an attempt to realize in law these last two points. This Act, recognizing that the law in most states dealing with law breakers is penal rather than correctional in its purpose and method and that punishment has not served to prevent crime or reform the offender in all too many cases, proposes that in each state there shall be set up an Authority to deal with young offenders beyond the juvenile court age and below the age of twenty-one. The function of this Authority is "to provide and administer corrective and preventive training and treatment for persons committed to it." The Authority is to consist of three persons appointed by the governor of the state. The term of each member is to be nine years, one each three years in order to give continuity to the personnel. The members are to give their entire time to the work of the Authority. The law breakers coming under the definitions of this Act are sentenced by the judge not to any institution but to the Authority. The Authority provides new institutions or secures the use of already existing institutions, private or public, in which these youths may be treated. It "is authorized to make use of law enforcement, detention, probation, parole, medical, educational, correctional, segregative, and other facilities, institutions and agencies, whether public or private, within the state."

The convicted youth is not committed to the Authority for any definite period, but it may discharge him "when it is satisfied that such discharge is consistent with the protection of the public." There are, however, certain limitations upon this power of the Authority. It must discharge him before the age of twenty-five, "unless the Authority has previously thereto made an order directing that he remain subject to its control for a longer period and has applied to the court for a review of such order." Also, any person committed to the Authority who was under eighteen at the time of the commitment must be discharged from its control before he is twenty-one, and any one eighteen years of age or over at the time of his commitment must be discharged within three years from the time of his commitment, unless the Authority has made an order holding him longer and has applied for a court review of the order. In such cases the discretion as to whether the youth shall be held by the Authority longer is entirely with the judge.

Thus it is clear that the Act contemplates that there shall be set up in each state a special agency to handle such youths, for the purpose of doing everything suggested by modern knowledge to prepare them for adjustment to life in free society. This Act if widely adopted by the states will provide a new experiment in the correctional treatment of

young offenders.²⁷ Up to 1944 this act was adopted by only one state, California.

The American Law Institute has also formulated a Youth Court Act, to which would be referred for trial the youths between the juvenile court age and the age of twenty-one. The purpose of this Act is to provide a court analogous to the juvenile court for the trial of youths, in order to get away from the usual procedures of the criminal courts.²⁸

QUESTIONS AND EXERCISES

1. Trace the origin of the reformatory movement in the United States, showing what influences and examples in other countries contributed.
2. Whence were derived the nine points in the system of the Elmira Reformatory.
3. How has the reformatory system influenced the conduct of ordinary prisons?
4. What features in the Elmira Reformatory were survivals of prison methods?
5. How do the Borstal institutions of England differ from our adult reformatories? From our juvenile reformatories?
6. What lessons as to the treatment of offenders have been learned from experience with the reformatories?
7. Secure copies of The Youth Correction Authority Act and of the Youth Court Act and present a detailed analysis of the purposes and procedures of each.

²⁷ For details of the Act see *Youth Correction Authority Act*, published by the Executive Office, American Law Institute, 3400 Chestnut St., Philadelphia, Pa. For a discussion of the Act see Healy and Alper, *op. cit.*, pp. 237-243.

²⁸ This document can be obtained from the American Law Institute.

Chapter XXXII

WOMEN'S REFORMATORIES

Women delinquents have always been less numerous than men. Possibly that is one reason why the question of separate institutions for women appeared late.

ORIGIN OF WOMEN'S REFORMATORIES

Salillas, in his *History of Prisons in Spain*, says that in the early part of the seventeenth century Spain had houses of correction for delinquent women in which a distinct reformatory and correctional purpose was evident. These were different from the workhouses that developed in Spain a little later and different from those that arose in other parts of Europe. Then about a century and a half later, after the galley system that had been in use for men was abolished in 1748 and prisons for men were established in which the reformatory purpose was emphasized, a society of women was organized in 1787 to assist in the reformation of delinquent women.¹

In the United States. In the United States Indiana was the first state to segregate the female from the male felons in penal institutions. In 1873, moved by the organized womanhood of the state, the legislature of Indiana provided for a separate prison for women. Its opening antedated the next in time, that of Massachusetts, by four years. In the beginning it was called the Indiana Reformatory Institution for Women and Girls. In 1889 the name was changed to the Reform School for Girls and Women's Prison. In 1899 the two departments were separated, one being called the Industrial School for Girls and the other the Women's Prison. Since then the Institution for girls has been moved to a separate site in the country and the Women's Prison has become in fact a women's reformatory.

In 1871 a movement was started to segregate the women in the jails of Massachusetts from the men. However, the only change made was that they were put into a separate department in the jails. The matrons, however, who were in charge of the women, were subordinate to the sheriffs. In 1874 there were 650 women in the jails and houses of correc-

¹ Salillas, *Evolución penitenciaria en España*, reviewed by Sutherland, *American Journal of Sociology*, Vol. XXIX, September, 1923, p. 244.

tion of that state. A voluntary association of women who had been aroused by this situation and who for four years had been busily agitating for a reformatory induced the legislature in 1874 to appropriate \$300,000 to establish a reformatory for women that would care for 500 inmates. The institution was completed and the first prisoner received on November 7, 1877. At first it had only thirty acres, but as time has gone on land has been added.²

In Europe. In Europe before the outbreak of World War II the women's reformatory movement had had even less development than in the United States. France had certain correctional institutions for women. These approached in purpose somewhat our reformatories for women. One of these, called a *Maison Correctionnelle*, was described in 1922 by an English woman. During the entire sentence the inmate was in cell-confinement. She had to live entirely alone. She had a large, light, airy cell, fairly well furnished, provided with water and electric light. Masks were worn by the prisoners when going about the institution so that no prisoner might be recognized by another, to make it impossible for other inmates to "keep the prisoner in countenance and confirm her in her belief that she is imposed upon there and is not to blame for her trouble," and to prevent demoralization by association with worse prisoners than herself. The prisoner had to pay a part of her way. She worked on a contract under the direction of the contractor but on a piece-work basis. For this she was paid a certain sum. With this income she had partly to support herself. She might obtain money from friends. The prison gave her only two rather poor meals a day, three garments, stockings, and wooden shoes. Whatever else she desired she had to buy out of her earnings. Through a visit every week and letters twice a week the endeavor was made to keep her in contact with her outside friends.

The results of this system seemed to be good, judging by reports of visitors. The women had plenty of work to do, were not repressed except in the denial of social contacts with those inside the prison, and did not suffer from the phantasies and emotional disturbances due to a repressive system of discipline. They were said to work and behave very well, and an English visitor reported that the inmates suffered as little damage from this system as from any system of which she knew.³

In England, in addition to the reformatory for girls under the Borstal system, before World War II, there was a convict prison for women only at Liverpool and a local prison for women only at Holloway. However, in this convict prison at Liverpool the women were in a block in such

² For the situation in this country about 1930 see Lekkerker, *Reformatories for Women in the United States* (Groningen, The Hague, Batavia, 1931); for more recent developments see the recent *Handbook of American Prisons and Reformatories* published by the Osborne Association, New York, at various dates as indicated in references in previous chapters.

³ Gordon, *Penal Discipline* (London and New York, 1922), pp. 210, 211; see also Mossé, *Les Erisons* (Paris, 1926), pp. 101, 102.

proximity to the men's remand block that the language of the men could be distinctly heard and conversation was possible between the two sections. In this institution the women had opportunities of talking with each other during the exercise period. This cannot be described as a women's reformatory in the American sense of the term.⁴

In Germany in 1932 I found that some of the German states had separate institutions for women, but usually the women were in a separate department in an institution for men.

In Soviet Russia in 1932 I found a mixed system. In some of the correctional institutions there were separate departments for women, but, as in the non-penal industries, the women worked with the men. There were, however separate institutions for women. In Russia all methods used in handling of prisoners are motivated by the desire, if possible, to reform them, and if that is considered impossible, to secure them in "isolators" for the protection of society.

DEVELOPMENT OF WOMEN'S REFORMATORIES

The growth of institutions for women convicts in the United States can be summed up as follows: In 1943 twenty-four states and the federal government had made provision for reformatories for women or for their custody and treatment in institutions separate from those for men.⁵

In addition to these state institutions practically all of the states permit the courts to commit delinquent women to private institutions. In actual practice some of the states contract with other states for the care of women delinquents who are thought to be reformable, and still others provide for the reformatory woman in the industrial school for girls, by raising the age limits.⁶ These other measures, however, for the care of delinquent women cannot be called strictly women's reformatories.

The federal government until 1927 had no institution for federal women offenders. In 1924 in response to the urging of a large number of influential women Congress passed the act providing for the Industrial Institution for Women located at Alderson, W. Va. Previously federal offenders had been kept in state prisons, jails, and houses of correction. This new institution, based upon studies of the best state reformatories for women, is up to the present time the model institution for the United States. The United States Bureau of Prisons built another reformatory for women near Dallas, Tex. This institution was for the women convicted of the violation of the United States laws in the western

⁴ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p. 347; see also *Report of the Commissioners of Prisons and the Directors of Convict Prisons for the Year 1925-26*, Cmd. 2826 (London, 1927), pp. 41, 52, 54.

⁵ Rogers, "A Digest of Laws Establishing Reformatories for Women in the United States," *Journal of Criminal Law and Criminology*, Vol. XIII, Nov., 1922, pp. 385, 386; McCormick, "Penal and Reformatory Institutions for Adults," *Social Work Year Book*, 1933, p. 346; *State and National Correctional Institutions*, American Prison Association (New York, June, 1943).

⁶ Rogers, *op. cit.*, p. 384.

part of the country, while those convicted in the eastern part were sent to Alderson, W. Va. The institution near Dallas, however, on April 1, 1942, was turned over to the U. S. Immigration and Naturalization Service, Department of Justice for the duration of the war.

Characteristics of the Present State Women's Reformatories. There are certain uniformities characterizing the women's reformatories, but there are also many differences. The purpose back of these institutions prevails in all of them. They attempt to take those women who are judged to be reformable and give them opportunities and training to prepare them for normal social relationships.

Some of the institutions are much older than others, and therefore they differ in their physical characteristics. The older reformatories were built on the institution plan; those more recently constructed, on the cottage plan.

Furthermore, as time has gone on, there has been a departure from the names by which these institutions were formerly called. Some of them retain the term *prison*; others, the name *reformatory*. Still others are called houses of refuge or houses of correction. Recently, however, the tendency has been to call them training schools or industrial institutions for women or farms for women. The endeavor has been to get away from any term that would stigmatize the inmates of the institution.

In penological theory, and also in practice in some states, there is a trend away from the segregation of women offenders by age and number of convictions, toward segregations on the basis of reformability indicated by the background and personal characteristics revealed by careful investigation.

These institutions are administered differently in various states, depending upon the governmental scheme for the control of the state institutions.

In general the age, while not always fixed, is between sixteen and thirty. Some have set a minimum of sixteen or eighteen years without any maximum. The modern tendency has been to remove the maximum age limit and make it possible for women of any age to be received at the institution. Usually the law lays down certain criteria to guide the judge as to who may be sent to these institutions. Sometimes eligibility is limited by the nature of the crime or misdemeanor, sometimes by the length of the sentence provided in the law for a given offense, and sometimes by the nature of the correctional institution to which the repeater had previously been sentenced.

Both determinate and indeterminate sentences are employed in sending women to these correctional institutions. The weight of penological theory is against the determinate sentence for correctional cases, and increasingly the limited indeterminate sentence is being used.

In most of the states having these institutions parole is provided for. Some of them, however, do not provide for parole agents.

The Purpose Back of the Laws. The above description of the chief features of the women's reformatories gives us only the barest outlines of the picture. However, it suggests something of the purposes and processes that modern thought on the problem of rehabilitating delinquent women has worked out on the basis of experience. It tells of the long and steady pressure of opinion throughout almost a century to adjust our methods to this important purpose. Gradually through that period it has become increasingly clear that the treatment of delinquent women must be not merely punitive but redemptive, so as to return the women to society better able to perform their functions as healthy, useful, and honestly self-supporting members of society. It tells the story of the attempt to take the care and treatment of delinquent women out of the mire of political spoils, to adapt the treatment to their needs as revealed by a careful study of their history and individual characteristics. In the dry bones even of our statutes we may see revealed the purpose of keeping women out of jails and prisons if they give any promise of reformation; of substituting treatment for punishment; and of sorting out those who by reason of mental defect or derangement cannot be reformed and placing them in permanent custody for the benefit of themselves and society, so that they may not defeat the reformatory purpose for those who are open to a change of ideals and habits. Within the past century steps have been taken in the treatment of the delinquent woman—medical treatment and the restoration of health, adaptation of treatment on the basis of mental, physical, and social investigation, social treatment in the restoration to normal life by training in small groups in family cottages, training in useful pursuits so that the girl may live an honest life after discharge, and training to respond to the best motives operative in free society. Instead of being confined in cells for punishment, these women are given outdoor life that they may know the joy of freedom in restraint to prepare for freedom in society. In short, six of some twenty points that have been emphasized by social workers with such women have been incorporated in the laws of almost half of our states, while a number of the others have been partially met, and many others have been actually carried out by those in charge of the institutions; in some, alas!, there is a form of reformation without the substance thereof. As yet in over half of our states there is no evidence that those concerned with the treatment of delinquent women have caught a glimpse of the public obligation toward these women.

Problems of Delinquent Women. Consider the peculiar and difficult problems presented by these women. Many of them are seriously diseased. Most of them have been engaged in unskilled or hazardous occupations. Studies in about half of the reformatories show that more than half the inmates are offenders against chastity; more than half are recidivists. The sex offenders are young women; the others are older. On the whole the intelligence level is lower than that of women in free

society. The level of the sex offender is lower than that of the property offender. The schooling of these women has been very deficient. Many of them dislike school. On the whole these women come from rather poor homes. In short, in the women's reformatories in the United States the population is much more unselected and heterogeneous than that in the prisons. These women have been convicted of drunkenness, prostitution, murder, keeping bawdy houses, shoplifting, adultery, drug addiction, and abandoning children. Here are to be found also troublesome girls who have been transferred from girls' reformatories. The inmates are young and old, colored and white, ranging in mental condition from normal to defective and psychopathic.⁷

Consider the difficulties of handling a psychopathic case like the following:⁸

A very handsome young woman eighteen years old at the time of her commitment to the reformatory. Unusual physical attractiveness, superior intelligence, but diagnosed as a psychopathic personality manifesting itself in hysterical attacks. American-born of a French Canadian father who was a hard drinker, never supported his family, and deserted when his daughter was a young child. Mother Irish-born, industrious, respectable, but extremely nervous; died when her daughter was sixteen. A younger brother arrested for larceny of money from his employers. As a child this young woman led a very irregular life, owing to lack of the father's support. From second to sixth year in an institution, then three years at home with mother, then placed in an institution until aged fourteen, when she was returned to her home because of bad behavior. Shortly after sent away again to the House of the Good Shepherd. Here so incorrigible that they kept her only one month. Then sent to a rescue home, discharged because of incorrigibility, and at fifteen committed to a reform school. Paroled from here to live with an aunt, she soon ran away and worked as an artist's model and in the ballet of a burlesque show. Committed with her illegitimate child of four months to the reformatory for women at eighteen on charge of larceny; well-behaved for the first few months of her stay. Sent to the institution hospital on account of a salpingitis. Screamed hysterically. Told that she must continue treatments for gonorrhea, she declared she was not in the same class as these other women who were being treated similarly. That afternoon had her first attack of apparent unconsciousness, frothed at the mouth as if having taken poison. Stomach was washed out but nothing found. Unconsciousness lasted an hour. Similar attacks once or twice a day lasting from one-half hour to six hours. Cessation of attacks for a few days, then more attacks occurring more frequently and more prolonged. Became insolent and refused to eat; threatened suicide. Potassium permanganate found beside her with stains of it on her nightgown and lips. Stomach pump, however, revealed nothing. [Continuing the story, Hodder's own words are:]

Her liberty in the hospital was then taken from her and she was put into a room with another woman to care for her. She then had an attack in which she screamed for an hour and a half, while she was in an apparently semi-conscious state from which all efforts to arouse her failed. She threw herself

⁷ Lekkerkerker, *op. cit.*, Ch. VIII; Fernald, Hayes and Dawley, *A Study of Women Delinquents in New York State* (New York, 1920), Chs. VI-XV.

⁸ Hodder, "Disciplinary Measures in the Management of the Psychopathic Delinquent Women," *Proceedings, National Conference of Social Work*, 1920, p. 391.

about with such violence, following this attack, that it took three persons to prevent her from injuring herself. After this she was quiet for one week and admitted that she had had no real intention of taking her life. A month after her admission to the hospital she was discharged to work out of doors, at her own request. The following night she had an attack in her room, being found apparently unconscious on the floor. When she came out of this attack she was very much excited, cursing and abusing the matron whom she found with her. She had finally to be brought back to the hospital where the hysteroid attacks were resumed, this time accompanied with constant screaming. She threatened suicide several times, and once was caught with a cord about her neck, which was removed with difficulty after her face had become cyanosed. She finally became so uncontrollable that she was transferred to the state hospital for the insane. Here she is reported to have continued her screaming, assaulted attendants, smashed and destroyed property, and in her quieter moments teased the insane women about her.

In about six months she was returned to the reformatory as needing no further treatment at the state hospital. Following this, she gave constant trouble in refusing to obey rules and in inciting others to do the same; she was insolent to the matrons and absolutely refused to do any work which she considered menial. There was, however, no recurrence of the attacks of unconsciousness and screaming, and four months later she was released on parole.

When only a few weeks on parole she broke it by leaving her place of work, taking with her clothing and money belonging to her employer. Six weeks later she was returned to the reformatory on revocation of parole. Since breaking parole she had been living with a prostitute, finally had attempted suicide on the street, and was taken to a hospital, the officers of which communicated with the reformatory. Two weeks after her return to the reformatory she was transferred to the state infirmary for an operation (salpingectomy). While there she was so unruly and unmanageable that the infirmary officials telephoned the reformatory she must be removed, and she was therefore returned to the institution as soon as it was safe to move her. On her return, she cursed the receiving matron and began at once to be unruly. She was admitted to the hospital department because of her condition. Here she began her old habits of screaming and cursing—would scream for hours at a time, so that it was impossible for the other patients in the hospital to get any rest; the mothers and babies also, whose corridor is above the hospital, had to listen day and night to her screams. When special appeal was made for her to be quiet for the sake of the babies, her answer was, "To hell with the babies." She refused to take medicine, threw it violently on the floor when it was offered to her. She was placed in a room as far as possible from the hospital and mothers' corridor, still being under hospital care, but her screams and banging on her door were still easily heard. She broke the chair in her room and with the pieces succeeded in breaking through the grating of her window. She yelled from her window vile language at any man she saw passing on the street; talked to the women through her window in obscene language and incited them to act badly; she took off all her clothing and sat naked in her room; would brace herself against the door so that entrance had to be forced when food was brought to her; assaulted and reviled the officers, or refused to speak to them or the doctor.

After five weeks of this, she calmed down, but the calm was short-lived; in a short time she was reported as in an excitable state, cursing and ugly. She made another pseudo-attempt at suicide, this time by drinking brass polish; she claimed she had taken a tablespoon full, and then began her screaming again. It took four people to hold her while the stomach tube was passed. Stomach washing showed again she had taken nothing. Following this, there was another period

of noise and screaming and escaping from her room. She tore up her blankets and made a rope of them, presumably to strangle herself; placed in the bath, she attempted to go under the water; she had pieces of glass broken from her window and made superficial cuts on her wrists. Finally handcuffs were placed on her (locked in front), and with these on she succeeded in tearing up her skirt, making a string and tying it to the radiator and then about her neck. She broke dishes brought her and refused food; threw food and contents of her toilet bucket on the matrons; spat in the faces of officers and doctors; would watch for opportunity to get past the officer as the door was opened and would run down the corridor and into the rooms, frightening other women—it took several people to get her back into her room and in the process she would scream out the most vile oaths, spitting and biting. Her most pernicious influence was on the other unstable women who would answer her songs and calls. Once she called "Fire" to create a panic.

There was next a period of comparative quiet, lasting almost three months, when she again had to be placed in the isolation corridor. She screamed, sang, and banged on the door; she dug through the plaster wall into the next room; broke down the door of this room; ran into the hospital, screaming that she had taken poison, potassium permanganate again, that she had found in the bath room into which she had broken; she fell into a semi-conscious state again and claimed to have great pain. Another washing of the stomach showed, as many times before, that she had swallowed nothing. She was placed in a fresh room in the isolation corridor but continued noisy and profane, broke eight panes of glass, and shouted through window at passersby that she was being murdered, that officers were sticking nails in her feet and scalding her feet and pulling her hair. She shouted the same accusations at the other inmates whenever she saw them in the yard. At this time she was seen by several visiting psychiatrists, who did not consider her insane. Shortly after their visit, a man from the neighborhood called at the institution to complain that his wife, who was pregnant, was being driven insane by the screams of the patient. He said the neighbors were gossiping; that many wild stories were being circulated about the patient, but the favorite one was that she was a woman seized by the police during a strike in Rhode Island, and that she "got going this way during the strike and could not stop."

She continued alternately quiet and troublesome for a period of several months, when it was finally decided to try the effect on her of transfer to a house of correction. This was done because she had been wont to say that, if one had to be in jail, the reformatory was the most fashionable place. It is reported that in the house of correction she began her screaming and smashing, whereupon the master promised her, if she stopped, he would see that she was paroled, and in this way parole was voted three weeks later.

This résumé of her reactions at the reformatory simply describes her noisy periods; her periods of quiet, however, were only relatively so—there was never any time when she was not troublesome. Special kinds of work had to be devised for her; she demanded rubber gloves when she was asked to do any work that necessitated putting her hands in water; special privileges had to be given that could not possibly be given the women as a group; the matron under whom she worked at such times was under constant tension. She was intelligent and attractive, and a leader of those about her, although she was on the whole brutal in her comments on the physical and mental defects of those less generously endowed than herself. Her tendency as a leader caused much more trouble than her noisy outbreaks, as it spread her methods among her unstable followers. She attempted, and succeeded in a measure, to start small riots, herself keeping in the background.

It is quite clear that in such cases hope of reformation is rather remote. The state should really provide for her care in a special institution, since the psychiatrists will usually not accept such patients on a transfer to their institutions.⁹

Even when the inmate is not psychopathic, incarceration in an institution may develop a state of mind that makes discipline difficult and reformation rather hopeless.

Discipline. In the women's reformatories much the same methods of discipline originally were used as in the men's. The marking system was employed for the purpose of stimulating good conduct because upon that system rested the possibility of early discharge on parole.

More recently, however, since the relation of mental conditions to delinquency has been made clear, the tendency has grown to apply disciplinary treatment to the unruly in accordance with the findings in the case. The disciplinary cases are often girls who are subject to emotional disturbances.

Mrs. Mary B. Harris, formerly superintendent of the federal Institution for Women at Alderson, W. Va., describes interestingly a number of methods she used at that institution and at the New Jersey Reformatory for Women. Among these are: (1) a careful study of the woman during the thirty days' quarantine period on reception; (2) organizing an inmate council in each cottage; (3) taking these councils into her confidence as to the aims and methods of the institution and explaining to them before hand any new regulations or changing conditions that may tend to disturb the inmates; (4) giving an obstreperous inmate a chance to cool off before having a talk with her or announcing the punishment she must receive; (5) using the influence of the group who share the spirit and purpose of the Reformatory to help the new inmate to adjust to institutional life; (6) using, herself, and demanding that officers use, courtesy towards inmates and inciting by example and precept the use of courtesy among the inmates; (7) wise use of the classifications committee; and (8) sympathetic understanding of the inmate's problems as they appear to the inmate herself.¹⁰

Classification is a term used in three different senses: the first and oldest usage meant segregating inmates in different institutions, for example, in a prison or in a reformatory. Then with the development of a cottage system it meant segregating different types of inmates in the various cottages in order that different types of treatment might be applied. The third extension of meaning grew out of the classification committee discussed in the chapter on prisons. Classification in this sense means determining on the basis of intensive study of each inmate, not only into what cottage she shall be placed, but what work she shall do, what studies shall be pursued, what plans she shall make for her future,

⁹ *Ibid.*, p. 395.

¹⁰ Harris, *I Knew Them in Prison* (New York, 1936), Ch. XXVII.

and what measures shall be used in reorienting her to free life in society.

Classification. The establishment of the reformatory was an attempt to classify women delinquents on the basis of age. However, the experience of administrators in women's reformatories, together with the growth of psychiatry and the understanding of personality, has made it imperative that classification should be established on a different basis. For example, Mabel Fernald found the following percentages mentally defective in the three New York institutions for delinquent women:

Auburn	23.3
Albion	25.2
Bedford	33.5

New York State after numerous experiments has a threefold institutional classification of adult women delinquents. The Women's Prison, which for a long time was located at Auburn in connection with the state prison, has been moved to the grounds occupied by the Bedford Reformatory for Women but in a series of buildings separate from those of the Reformatory, buildings constructed by the Rockefeller Foundation as a laboratory of social hygiene. In 1923 the state purchased this property and used it for a short time as a special institution for psychopathic reformatory inmates. This experiment did not work out very well, and now these buildings, with others added to provide a complete unit, have become a women's prison. While the occupants are kept entirely separate from those of the Reformatory, for economy both institutions are under one superintendent and certain activities like industries and recreation are under personnel common to both institutions.

The old institution at Albion known as the House of Refuge was designated by the legislature in 1931 as the "institution for defective delinquent women." Its official title is the Albion Training School. Heretofore these defective delinquents had been segregated in a special division at the Bedford Reformatory, but this experiment was not a success. This classification of mentally defective delinquents in a separate institution marks a distinct advance in the treatment of delinquent women and is to be found in only two other states, Massachusetts and Pennsylvania.

The third institution is the Bedford Reformatory for Women at Bedford Hills, N. Y., opened in 1892 as the State Reformatory for Women of the eastern section of the state. It has now become the reformatory for women for the whole of New York State except mentally defective women and those sentenced to prison. Thus New York has a classification by institutions as well as a classification of the reformatory inmates at Bedford by a system of cottages. It is the only state having a special institution for mentally defective women delinquents.

At the new Federal Industrial Institution for Women opened in 1927 the two groups of cottages provided for the classification of women in that institution and for an extension of the individual treatment of each inmate.

These experiments are an indication that the careful students of the problem of the delinquent woman have at last become conscious that all kinds of delinquent women must be handled in such a way as to do the most possible to restore the inmate to a normal life and to keep in custody those who cannot safely be returned to society. To do this, colonies for the different types should be established so that as far as possible the individual and community treatment would be suited to the needs of each individual.¹¹

Officers. Where partisan politics has not laid its blighting hand upon them, women of extraordinary capacity have been placed in charge of these institutions. Such women as Davis, Hodder, Van Waters, Harris, and others of their sort have made the women's reformatories of the United States known throughout the world. In England the practice has been established of using only professional women as officers.¹² The quality of the personnel of the women's reformatory, as of any other correctional institution, in the last analysis is the factor of prime importance.

WHAT SOME OF THE BEST REFORMATORIES ARE DOING

A brief description of two institutions for women will perhaps provide a concrete picture of their activities. Let us take a small institution in Vermont, a very thinly populated rural state, and then the federal institution for women at Alderson, W. Va. The institution in Vermont has only a small number of women, perhaps seventy-five. That at Alderson, W. Va., was built for about five hundred. Did space permit, a better picture of the woman's reformatories would be provided if we could describe also some of the state institutions medium in size, such as that in Connecticut, or the one in New Jersey.

The Vermont State Prison and House of Correction for Women. This institution is an old one, originally built on the institutional plan and with a wall. Under the leadership of Lena Ross, its superintendent, it was transformed from an old, forbidding institution into one of the most constructive among the women's reformatories. The old cell blocks were torn out and the cell houses transformed into homelike rooms. The doors were not locked in the daytime, and yet in 1931 only three had ever escaped. They had only one industry in the institution, a laundry, which not only did the work for the institution, but "took in washings" from the people of the town. The following quotations from an article by Sarah Cleghorn will give an intimate look-in on its workings:¹³

¹¹ Hodder, "Indenture of Prisoners: An Experiment," *Journal of Criminal Law and Criminology*, May, 1920, pp. 29-32; Harris, *op. cit.*, Ch. XXIX.

¹² Hodder, in *Public Document No. 115, Commonwealth of Massachusetts, Annual Report of the Commissioner of Correction, 1921*, p. 88.

¹³ Cleghorn and Canfield, "Miss Ross' Girls," *The Survey*, Aug. 1, 1931, p. 430 ff.

Come in and look at the kitchen. Do you see that one of its three outside doors open to the afternoon sun, on a court with a lattice fence? There used to be a solid brick wall eighteen feet high closing in that court. Two or three of Miss Ross' girls are resting out there, sitting on a bench on the bright grass. Inside too the sun shines and the breeze blows. "This sunny, open, homelike place," says Miss Ross, with a trueborn Vermonter's many-meaning'd smile, "costs much less than bolts, bars, heavy furniture and the many, many guards used elsewhere, as expensive as they are deadening to the soul."

In that kitchen, when a Riverside girl has a birthday, her friends make her a birthday cake. In that dining-room, for birthdays and holidays they decorate the tables and make a festival supper. Did you ever hear of prisoners having parties? Riverside has had a wedding breakfast. For health, human beings must have light and air—inexpensive commodities usually expensively shut away from prisoners. But they need work too, just as bitterly. "I wanted to give them some real womanized work which could be competently handled," said Miss Ross, "without expensive equipment and supervision. I thought," she said, "of laundry work. No, I didn't advertise or anything. I just told some of my friends if they'd send us their laundry we'd do it. Some people I realized might be afraid to send their belongings here. They might be afraid something might be stolen. But Rutland people didn't seem to be afraid." (You see, they had known Lena Ross for some fifty years.)

This, by the way, is one of Miss Ross's great qualities. It never seems to cross her mind that she will need to do anything alone. She counts on her friends and they respond accordingly; so that whatever she tries to do she has troops of helpers.

"Well, our first month's gross receipts," said she, still giving the history of Riverside's flourishing laundry, "were twenty-five dollars. What do you think Judge Weeks said? Splendid!" Miss Ross laughed. "In the beginning, you know, there were only four set tubs and flatirons heated on the kitchen stove. Now don't you want to come and see the laundry? . . . Here you see we have three washing machines, family size, fourteen self-standing ironing boards, each with its electric iron, of course, and two mangles, broad and narrow."

The washroom and the ironing room, one above the other, were airy, light and cool. (It was an August day.) Their generous windows, as in the other rooms, run all along the side.

"Yes, twenty-five dollars was our first gross receipts. And now that we've been doing laundry work for seven years we almost pay the whole living expenses of Riverside."

"What! you mean the cost of food and shelter? . . . and that's sufficiently wonderful. You wouldn't mean to include staff salaries, doctor's bills, anything like that?"

"Oh yes I do! Including salaries, doctor's bills and so forth, our laundry almost supports us. In 1929, we were only \$1063 short of covering our total living expenses. And out of that, we paid bonuses to the girls. They get three to six dollars a month themselves, and we lay aside a dollar a month for each one for their 'discharge money.' But that's the least of what the laundry does. It builds up healthy pride, and workmanlike responsibility and social solidarity. It's a common thing for one of the girls to suggest some way of saving money or increasing the income. One woman, when we were having so much trouble to find a man who'd keep the furnaces going properly, said, 'Why not let me take care of those furnaces? I could do it perfectly well, and we'd save money to buy something we need.'"

"How many workers are there running this laundry?"

"Well, we average a total population of seventy; and it takes almost half of

them to run the institution. The rest work in the laundry; thirty-five to forty."

In another room, the work-room, we asked idly, looking at an ordinary door, "Where does that lead to?"

"To the street," said Miss Ross, "and it's not locked."

We looked around. A group of women actively came and went at their work but with no signs of a guard anywhere in sight. "Whom do you have with this group of pris—your girls?" we asked.

"A matron."

"But where is she?"

Miss Ross looked and said carelessly, "She might just have stepped out somewhere for a few minutes."

This was too much. We drew her back into a corner and said sternly, "Now come, no nonsense, you *must* have runaways! How many have you had in the nine years you've been here?"

"Three Federals," she replied, "and they were still in a drug-crazed condition before they got their health and spirits back. They weren't hard to find either. It never has cost the State of Vermont one penny to recover runaways. They were brought back by the federal government."

"Not another one?" we urged.

"Well, yes, one Vermont girl ran away after she'd been here a short time, but before I got around to starting out to look for her a man who keeps a little general store back in the mountains called us up on the telephone: 'Say, Miss Ross,' he said, 'one of your girls has just come in and wants us to telephone you to come and get her.'"

"But what *do* you do to make them act so?" we asked, baffled.

On her Jane-Addams-like face, usually set in a reticent Vermont expression of practical matter-of-fact common sense, came a look that was half exaltation, half indignation. She flashed out briefly, passionately, "I treat them the way I'd like to be treated myself if I had to come to a place like this."

So simple as that, O Galilean wanderer, who told us this recipe so many centuries ago. We were a little abashed, as all moderns are by a glimpse, even a passing one, of a Christian soul. But we persisted in our cross-questioning, groping for some machinery to report to a world that puts its faith in machinery and organization.

"Well now, come right down to concrete details. Suppose now that you get in a woman prisoner, rotten with venereal disease, as many of them might be on arriving, without an ideal in her head, healthless, vicious, violent, unclean. What is the first thing you do for her—and the next and the next? You don't put her right away in a room with an unlocked door opening on the street?"

"I'm not a born idiot," Miss Ross answered us, unnecessarily. "Of course I don't. First of all we look after her physically. She goes into our hospital for a fortnight, and the hospital door's locked. But we all, matrons and girls, run in and out of the light, airy room, more or less during that period and get acquainted with her. The girls who have been there some time are splendid about that. They help get the new ones settled much better than we do. They know what to say to them. And the new ones believe what the girls say about Riverside when they wouldn't believe us."

"The newcomers rest, in bed if they're pretty sick, as many of them are on coming, have a thorough medical examination, just what anyone ought to have once in so often, and they are treated for whatever's the matter. For instance, a repeated offender, a very hard case, a woman nobody had ever been able to 'make any impression upon,' was sent in a few years ago from the north of the state. When she came in, we noticed that she held her head over to one side. She kept continually wagging her head. We asked her if she were in pain, and

she said drearily, 'Oh yes—it hurts all the time.' She had double mastoid! We sent for the best specialist we could get. You know that's one great thing about the State of Vermont. It isn't a rich state, but it never sets a limit on the amount to be spent for its sick prisoners and other dependents. We sent that woman to the Rutland hospital (for we never have serious operations done here) and we pulled her back to health.

"It seemed to make a great impression on her. From that time she changed, completely changed. She's never been in a court-room since but once; and then it was to testify as a witness in another case. But when she finished her testimony she asked for a minute longer. She told the judge she wanted to thank him for sending her to Riverside for that was the first place where she was ever treated as if her health and happiness were of any importance. 'Why, Judge,' she said, 'they called in the best specialist in Rutland!'

"Out of twenty-five women who entered, syphilitic, twenty-one showed before they left, completely negative tests. We try to take the tests three times at least to be sure. Two weeks of quiet, cleanliness, rest and security—they can read or sew or knit or write letters or sing, or anything they like—in the hospital with some friendly talks every day, usually get them far enough along the good road so that they enter into our community life when they come out. I tell them myself something like this: 'see here, it's hard on you to be shut up here, and I wouldn't like it a bit if I were you. But there's no getting around it, it's got to be lived through. Now we, here, think it's much better to try to get through it as comfortably as we can instead of as uncomfortably. We haven't a thing to do with you being sent here, so it's really not fair to try to take it out on us.

"We try our best to make these years of your life a time when you'll get your health back, learn things that you never had a chance to before, and go out with a better chance of amounting to something.' Most of our girls do, after they leave here. We've had about 370 go through Riverside in the ten years since I've been here, and only four Vermont girls and two Federals ever came back to us on a second court change. You just think it over. Talk with some of the girls who've been here awhile. They really know about it, from the inside, of course." As she thus gave us some idea of how she presented her ideas to the helpless creatures who came under her care, her face shone with sisterly reasonableness.

The other institution, the Federal Industrial Institution for Women at Alderson, W. Va., represents an entirely different type of reformatory for women. It is intended, according to the Act of Congress establishing it, for "female persons above the age of eighteen years, convicted of an offense against the United States, including women convicted by consular courts sentenced to imprisonment for more than one year."¹⁴ It is built on 517 acres of land. It is constructed to care for five hundred inmates besides the staff, on the cottage plan with two groups of buildings, one on the upper campus and one on the lower. The features to be found in the institution are those which experience has approved in similar state institutions. It cost something less than two and one-half million dollars. All the buildings are fireproof. Provision is made for every feature found necessary for the proper handling of the inmates. It has, in addition to the service buildings, such as water supply, ventilation plant, sewage disposal plant, power-house, laundry, storehouses, and so on, an

¹⁴ Public No. 209, S. 790, Sixty-eighth Congress.

administration building with living quarters for the members of the staff, a dining-room, superintendent's residence, a receiving building, an industrial building, fifteen cottages for thirty inmates each, a staff house, a school and assembly building, and a hospital with thirty-two beds, besides garages, grain houses, root cellars, incinerators, barns, dairy house, poultry house, piggery—in short, all the necessary buildings to carry on the life for nearly six hundred people.

The institution stands on a hillside in the midst of a natural grove with the two campuses at right angles to each other, but on different levels. Each of these campuses has buildings on three sides. Each of the buildings is separate from the other, preventing that feeling of pressure and tension often resulting when the buildings of an institution are crowded together.

The cottages are planned so that each has its own dining-room and general living-room, with the living-rooms for the inmates in between. These rooms are furnished simply but attractively. Each girl takes care of her own room and is permitted to fix up the room according to her own individual taste. Each of these cottages has sleeping-porches in addition to the bedrooms.

At one end of the upper campus is the receiving and classification building. In this are the quarantine rooms where the girl stays for two weeks after her admission. This building can care for fifteen women. The clinic is also located in this building. Besides the classification building there are quarantine cottages housing twenty-four girls each, the only cottages in the institution having barred windows. The hospital is located next to these cottages, while the school building, comprising the auditorium, the library, the classrooms, and the gymnasium, is located at the top of the steps leading to the lower campus. Five typical cottages complete the scheme of buildings on the upper campus.

On the lower campus are the administration building, the staff building, the household science building, and seven cottages. Here also are located, at some small distance away, the storehouse, the steam laundry, the cannery, the garage, the shops, and the power-house. The women work only in the laundry and the cannery.

Consider the following description of the methods employed in this institution, written by Mrs. Harris, the superintendent: ¹⁵

In correctional institutions, this mass-handling almost of necessity tends to favoritism, and is the fundamental cause of many of the abuses which flourish in the abnormal atmosphere of custodial institutions, often without the knowledge of those in authority. To prevent this favoritism and corruption, and to give every inmate committed to these correctional and penal institutions an even chance to develop as far as her endowment permits and become a law-abiding

¹⁵ *Annual Report, Federal Penal and Correctional Institutions, Fiscal Year Ending June 30, 1930* (United States Penitentiary Annex Press, Fort Leavenworth, Kan., 1930), pp. 44-54. See also Harris, *op. cit.*, pp. 323, 324.

and self-supporting member of her group, should be the objective of these institutions. Toward accomplishing this result, much has been learned from the large, over-crowded state hospitals for the insane, where many of the same problems are met in a scientific manner, in spite of the large number of cases handled. By staff meetings, at which each case on admission is presented by one of the staff and brought to the attention of the Superintendent and entire staff for diagnosis, treatment, and follow-up care, every patient, however poor or helpless, receives the advantage of the best advice the hospital affords.

The same plan has been in operation in this Institution almost from the start. A classification committee, consisting of the Superintendent, the director of classification, the psychologist, resident physician, record clerk, parole officer, and warders of the cottages, meets twice a week or oftener to consider the cases before it. To this committee are presented all incoming cases for diagnosis and assignment. At the end of every three months, the same cases appear again for detailed consideration and reassignment is made if deemed advisable. Disciplinary cases of a serious nature, involving loss of "time," are brought before the committee. Cases that show personality difficulties are frequently stabilized by bringing them before the committee every week for an indefinite period.

At all these meetings, the inmate herself appears, her program is explained to her, she is given an opportunity to share in the plans for her future, and told where she is succeeding or failing. At these meetings, a report is presented in writing from everyone who has official relations with the case, either in industrial department or cottage or school. The physician presents a new medical report every three months, often permitting change of assignment. Nothing is left to chance, or a haphazard guess, or to individual memory, too often based on the last contact, whether pleasant or unfavorable. Daily conduct reports come in from cottages and departments, and are checked by the record clerk. If the same individual has poor reports for several days, the case is investigated, and if not adjusted in the cottage, is brought before the committee.

The work of the classification committee is the heart of the morale of the Institution. It brings together at regular intervals an impartial group who plan and formulate without prejudice or rancor. It permits no inmate to be neglected or overlooked. In short, like the staff meetings of a hospital, it functions toward the individualization of treatment that is the basis of the rehabilitation for which the Institution was created. It takes time and work to prepare the records and hold the meetings. But it saves time in that everyone working with the individual understands the problem and knows the program. Time is saved in that all work toward the same end, and a minimum of effort is wasted in undoing the mistakes caused by lack of co-ordination and understanding.

The whole physical plant is intended to carry out a classification as minute as possible and yet retain the wholesome influences of group life. Each of the cottages has its own living-room, dining-room, and kitchen, thus providing for the teaching of all phases of home-making as well as for classification.

Ample provision is made for medical and surgical care in the hospital of the institution. Special attention is given to venereal disease and drug addiction. The experience in this institution is that after three months' time as a rule the drug cases present no variation from the rest of the population. This is due to good medical care, good food, regular habits, outdoor occupation, and a program intended to build up new interests and habits of thought after the physical craving has ceased.

The problem of education in this institution is difficult because of the different potentialities of the students. They vary from college graduates to illiterate Americans and foreigners. They range in age from eighteen upwards. Some are sick, some well, some willing, others unwilling. They enter the institution any day of the year. The problem is to organize an educational program suited to the needs of the individual pupil and yet fitting into the necessary maintenance work of the institution. The law requires elementary English and Americanization classes for the illiterates. Reading is provided in subjects connected with their future occupations. Inmates of superior education are used as teachers under the direction of a civilian teacher. Assignment to both school and work is made only on the recommendation of the classification committee. If illiteracy or shortness of sentence prevents a woman from benefiting from a complete course, a modified course is planned suited to her situation. The attempt is made on the basis of the study of the individual to provide a training fitting that individual for a useful place in society. In all this work of the classification committee, the psychologists' and psychiatrists' findings and the social history are basic.

Practically all the maintenance activities of the institution are used as methods of training these women for a vocation. Mrs. Harris believes that the most important activity from the standpoint of both health and output is farming. All except the heaviest work on the farm is done by the women.

Within the institution itself a program of social activities is carried out by groups organized among the inmates in order to satisfy the natural social yearnings of these girls. The organized groups coöperate with the institution management to promote the highest development of which each individual is capable. These groups share in the government within the institution and take the responsibility for individual conduct in order to train for citizenship in the free world. In each cottage is a coöperative club with membership open to all but graded into probation group, electorate, and executive committee. These clubs provide an incentive to rational conduct and have proved to be a stabilizing factor in the development of morale. Other inmate organizations are encouraged, such as the annual "Country Fair," the Wednesday evening "Current Events" programs, community singing, choral work, minstrels, and plays by the different cottage groups. Athletics and competitive games are fostered during the summer months. Cottage baseball teams enroll as many as two hundred of the inmates at one time. Religious activities are organized and carried on. In addition to grace at meals and evening prayer in all cottages, on Thursday evenings formal instruction is given by visiting clergymen of the Protestant and Catholic faiths. Sunday afternoon a vesper service is held for the whole institution. On Sunday evening each cottage has its own service planned and conducted by members of the cottage in turn. Every Christmas a pageant of the Nativity is

presented by the choirs. Holy Week is observed daily by chapel exercises, and Easter is ushered in by an outdoor sunrise prayer-meeting.

These various occupations and interests tend to provide sublimations of the fundamental impulses and stabilize a great majority of the inmates. The cottage groups themselves handle the minor infractions of rules. Serious cases are brought before the classification committee. The only punishments used are loss of privileges, seclusion, and loss of "good time."

In spite of the fact that this institution receives women who are usually found not only in reformatories for women but also in women's prisons, that practically half of the inmates are drug addicts, and that many of them are seriously disturbed mental cases, none have had to be sent to institutions for the mentally disturbed, and the stabilization effected in all these cases has been quite satisfactory. Mrs. Harris gives great credit to these coöperating clubs and the other group activities of the inmate themselves.

Contrast that picture with the following description of the situation in the old type of institution for women:¹⁸

Let us go with the girl to her detention and see its effect upon her. She has just waited in prison for her trial, has been sentenced, and is brought to Aylesbury. She arrives suffering from some degree of shock, and is usually fairly subdued.

She goes for at least three months into the "punitive" ordinary grade. She does not come as to a school, where she is going to learn about life and conduct, but as an ordinary prisoner. . . . For these three months obedience is almost the highest virtue that her prison life allows her to show. . . . But nothing can make the prospect of two or three years' imprisonment anything but a shock, and a severe trial to an adolescent girl (or boy). . . .

Sometimes her sentence has separated her from a lover or *fiancé* or she is in dread that she will be deserted, and in grief because she will not be able to write or receive enough letters to keep really in touch with those she loves. Sometimes she has the reproach of having wounded and disgraced her family. With all her feelings on edge, with the conflicting emotions of shame and self-justification, depression and bravado, inferiority and defiance at war within her, in amazement at finding herself thus torn up by all her young roots, she is in a sorry plight, and is a subject for delicate and skilled approach by those who would know her attitude towards them, and show her theirs towards her. . . .

Certainly it may be necessary that the wilful and uncontrolled should be brought under control, and should suffer some degree of loss of liberty for their own, and their neighbour's sakes. But are our ideas so poverty-stricken that we can take no other way with this girl than to deprive her of all her personal liberty, to create for her more offenses than she could commit in an ordinary school, to subject her to continual reports and punishments, and to penal discipline, with the degrading feature of the penal class—to make of her a chattel, not even self-supporting, and to place her under a set of more or less trivial regulations which force her into an institution mould? Can character, personality, or even a disposition to refrain from crime, develop in any such soil? Let us see its effect upon her, and how her attitude is affected by the system.

¹⁸ Gordon, *Penal Discipline* (London and New York, 1922), pp. 172-180.

Modern psychology, in its practical aspect, has little to say about brains and intelligence—it is based on a study of the primitive instincts and emotions. A prison, on the other hand, has no use for the emotions; expressions of feeling are as much out of place as pistols would be: the prisoner's part is to do as she is told, and consume her own smoke. In practical psychology the adjustment of the individual to life depends upon mental and emotional balance. If a person is "wrong-headed" his cure is as often as not *via* his heart, or vice versa. . . .

One of the most common states of mental debility or illness, which is always associated with emotional stress, is hysteria. . . . There is plenty of it in all societies, and as it is highly dangerous, if untreated, to the integrity of the personality, and apt to supervene in people of great value to the community, it should never be lightly regarded.

It is produced by predisposition, and can occur in attacks under the stress of mental conflicts, of which the patient is unaware. The condition may affect the whole state of the patient, and may sometimes leave considerable mental injuries in its train. It is made worse by occasions of emotion, solitude, repression, lack of interest, fatigue, stress, shock and punishment. . . . Whatever the factors which they as individuals bring to the production of this pathological state, the prison, by shutting down the instinctive life, and setting the heavy weight of penal discipline on the safety valve, unquestionably plays the larger part. The prison holds the prisoner in a state of emotional stress and mental conflict. As has been pointed out by other writers, it is not the imprisonment itself, but the psychic result of the imprisonment that does the mischief. . . . She, who has perhaps, never in all her life slept in a room alone, is locked up every night for nine or ten hours. In her cell or "room" she may rage, or cry, or suffer her personal pains dumbly. She quickly settles down among her fellows, and her first reactions are seen in her movements and attitudes, and in a defiant flouncing walk, and manner of obeying orders. In the period when she is better having as little of her own society in her cell as possible, she has the most of it, and eats alone, and may not talk. If she does not get peacefully through her first three months of this discipline, she will have more of it. She soon, unconsciously to herself, represses what is painful to her. She does not occupy herself with the dreary affairs of the Institution, or her mind with the easy work that is spread over a long day. She broods and fancies, or (as science spells it) phantasies her world, not as it is, but as she would like it to be. . . . In a few weeks her cell becomes the place where she can indulge her dreams, and where she wishes that the wishes [*sic*] that she cannot realize in real life, come true. Her inner world becomes more real and vivid to her. Her face begins to "set," she no longer flounces when she walks. The stage is already revolving without her. She is going away. Supposing that this is all that happens to her. Is one, or two, or three years of this going to make her abstain from crime?

But this is frequently not all that happens. Presently you may see the "effect of discipline" on her. She begins to get mechanical over her work, although she may go briskly about it, and may settle down to the remorseless time-table. When the Inspector asks about her conduct the reply is that she is not very bright, but "keeps on," or "plods." This is the good prisoner. She is tractable, she gets no reports. . . .

You may see her on Sunday sitting in chapel in her pretty frock, apparently listening with a serious face, or singing earnestly. Is she there at all? No. She is eating chocolates in a music-hall, with Alf, or is under a bush in Richmond Park with Bert, or is having the Sunday dinner of steak and onions at home, or is buying a new hat trimmed with pink, or is wondering who Bill is going to take out instead of herself on Bank Holiday, and what she will say when he tells lies about it, and she finds him out—in two years' time. You have her here and

are drilling her, but she is not even listening to you. She is living her aching longings in phantasy. If they are no worse than the above you have something at least to be thankful for. She may go through her whole term of imprisonment like this. The Inspector hears that she is inattentive, and takes no interest in anything. No one can imagine what work will suit her when she leaves, on her discharge. She seems to have no likes or dislikes.

Results. What have the reformatories to show in the way of results? We have two somewhat different conclusions on the matter. There are those who, after the great progress made in the institution at Bedford and similar ones had begun to show results, and comparing those results with the products of previous methods, were enthusiastic. Said Mrs. Barrows: "The statistics of those placed on parole who have never been re-arrested, and the number holding their word by reporting regularly, are, however, ample encouragement for those who have had the care of these women."

Ida M. Tarbell, ten years after the establishment of Bedford, wrote as follows:¹⁷

But how well will they do? The statistics of the first one thousand girls in the institution show about what can be expected. Six hundred and sixty-eight of this one thousand were paroled after an average stay of two years. Out of this number one hundred and fifty-four broke parole, and a third of their number, fifty-two, were never found. What was the cause of these failures? In thirty cases it was drink. Rarely are the habitual drunkards reformed. Drink for one-fifth, and for the other four-fifths immorality. Sometimes it is an old love, sometimes a former girl friend, sometimes the call of the street, which is back of the relapse. . . .

One hundred and fifty-four then of the six hundred and sixty-eight girls broke parole, but in hopeful contrast is the fact that three hundred and ninety-three paroled girls were discharged after having "done well." Scores of these are happily married, or are earning sufficient incomes. To many of these Bedford is "home." They come back for vacation, for Christmas, for the Fourth of July. At one of the big lawn-parties which the institution occasionally gives in honor of its neighbors, a guest of wealth and social position said to a fine-looking woman in the company: "What a wonderful place this is! Were you ever here before?" "I was once a girl here," she said quietly. That woman was transformed from an irresponsible and ignorant street waif to what she now is, an intelligent and happy head of a home. It is a point of honor with her to own her debt.

On the other hand, a sense of comparative failure has been voiced by some of those who have been most intimately acquainted with the reformatories for women in both America and England. Said Mrs. Hodder, of the Massachusetts Reformatory.¹⁸

Reformatories for women are not now meeting the needs of the women sentenced to them by the courts. We reach this conclusion from a conviction that with so poor a tool no worth-while result can be achieved.

¹⁷ Tarbell, "Good Will to Woman," *The American Magazine*, December, 1912, pp 45-52.

¹⁸ Hodder, "The Next Step in the Correctional Treatment of Girl and Women Offenders," *Proceedings, National Conference of Social Work*, 1918, pp. 117-121.

A reformatory which receives women from all the courts of a given state has within its walls a group of people whose only common denominator is crime, not similarity of nature. In that year (1915), while 36.4% had no nervous defects, 26.2% were neuropaths, 12.4% psychopaths, 16.2% were epileptics, and 8.8% were hysterical. To try to handle all these various types by the old methods of the reformatory is sure to be unsuccessful. What is needed is that these women be classified, not according to age or crime, but according to type of make-up. Then care for them, either on probation (for the normal) or in colonies where each one will be treated according to the nature of her disability. The next step, then, in the correctional treatment of girl and women offenders is a new kind of reformatory—a reformatory which shall be organized and administered on the principle that persons committed to it must be classified into distinctly separated groups, who shall be given the special care and treatment that these groups require, care and treatment which shall focus itself not only upon the physical problems involved, but especially upon the psychiatric problems which are the predominating factors in their delinquent careers.

The picture previously given of the institutions in England by one who for seventeen years was an inspector of the institutions in which women delinquents were kept is one of even greater failure.¹⁹

In partial explanation of the girls' behavior she adds:²⁰

Naturally all prisoners do not react to repression in the same way or degree, and the picture I have drawn includes a number of stages which may represent the condition of a number of girls. But I believe that the 111 cases of violence of which 33 ended by restraint of the girl by handcuffs last year, were not due to any other cause than a pathological state induced by the character of the disciplinary condition which we impose in our prisons, and under which it is hopeless to engender the attitude which will lead to what has hopefully been designated as the "arrest of the criminal habit."

RECENT TENDENCIES

As a result of the frank facing of the shortcomings of these institutions a number of tendencies that are not yet fulfilled in most places are to be seen:

1. An earnest attempt is being made in the most forward-looking states to classify the different types of individuals in order to individualize the punishment more definitely.

Mrs. Hodder, before her death, attempted to make the Massachusetts Reformatory contribute to the individual treatment of the inmates. Dr. Van Waters, Mrs. Hodder's successor, recently has taken even further advanced steps so to organize her institution that the individual inmate may be treated according to her needs and will be so organized in her social relations within the institution that she becomes adapted to free life. The measures taken in New York State look in the same direction. In a number of other states those in charge of the institutions for women are trying new experiments to prepare these women for free life.²¹

¹⁹ Gordon, *op. cit.*, Ch. 10.

²⁰ *Ibid.*, p. 187.

²¹ Van Waters, "Where Girls Go Right," *The Survey*, May 27, 1922, pp. 361-376. See also Lekkerkerker, *op. cit.*, Chs. XIV-XXVI; Harris, *op. cit.*, Part V.

2. There is a tendency to get these women out of doors, outside of walls, and even out of workrooms and institutions as much as possible. The best institutions are working the inmates out on the land of the reformatory. This plan serves the purpose not only of classification, but of outdoor work with its healthful and quieting influences upon the women.²²

3. In the treatment of delinquent women it has been clearly seen that medical attention is of the first importance. Large numbers of these women come into the institution badly diseased. Their social rehabilitation must begin with the physical. Consequently in our best institutions the women are given as good medical and surgical treatment as can be found in any hospital.

4. Research has been forced upon the institutions by the necessity of basing treatment upon known facts about the women. Massachusetts has had a research department since 1911. During its first ten years it studied 1,748 individual histories. These studies were used in the weekly clinics and formed the basis of the treatment of the women as well as the foundation for decision as to whether women should be recommended to the Board of Parole.²³ Careful study given to each individual case, such as is found in the new federal institution and a few of the state institutions, with careful records of the findings and frequent staff conferences in which each case is discussed, provides the basis for that individual treatment that is so often discussed but about which so little has been done.

5. While psychiatry has brought to the attention of workers with delinquent girls and women the importance of considering the emotional life of the inmates, little attention has been paid to this matter by most of the women's reformatories.²⁴ On the other hand, a number of the leaders in the work of women's reformatories have a high appreciation of the importance of mental hygiene and the part played in mental health by emotional adjustment. Dr. Lekkerkerker after a study of the women's reformatories in the United States and a discussion of the failure of merely repressive measures for those actions on the part of inmates who are suffering from the suppression of their ordinary ways of emotional outlet, discusses some of the factors which have been found very valuable in the emotional adjustment of the women in these institutions. She says:

The active community life, the home-like atmosphere of the cottage, the possibility for the women to decorate their own rooms with plants, pictures and other personal possessions, giving them at least a semblance of home, all these

²² "A Woman's Industrial Farm Which Replaces a Prison," *The Literary Digest*, Sept. 25, 1920, pp. 77-80.

²³ *Annual Report of the Commissioner of Correction, Public Document No. 115, Commonwealth of Massachusetts, 1921*, p. 84.

²⁴ Lekkerkerker, *op. cit.*, pp. 394-395.

are factors of great interest in making the situation more satisfying from the emotional point of view. Equally important is a full and varied program of activities sufficiently adaptable to individual needs to arouse and hold the interest of all the women. Outdoor life and work and active sports offer outlets for the physical energies of the inmates and prevent much unwholesome day-dreaming and other undesirable practices. Music, folk-dancing and other forms of expressive and emotionally colored recreation are felt to be indispensable aids; an excellent outlet is particularly the theatrical performances in which the women can express their dramatic tendencies. The injection in the program of some adventurous and exciting elements every now and then, such as excursions in the woods for picking berries or the construction of some unusual work, is also very valuable in warding off pent-up emotions. Good books and moving pictures, too, may be a great help in that they satisfy the cravings for romance and thrill. The animals on the farm and domestic pets form to some women a source of much emotional gratification, and the babies, too, are often unconscious assets in the emotional adjustment of individual inmates of which some institutions make a tactful use. The mail and visiting privileges also mean a great deal to the inmates as we shall point out elsewhere. Taking part in altruistic community activities and undertakings, such as Red Cross work, sometimes is a great aid in sublimation.

6. Moral and religious instruction, unless so organized as to give an outlet to fundamental human emotions, is looked upon by the inmates as only a part of the repressive régime. Properly organized it may become a satisfactory outlet for the emotional needs of these somewhat disorganized women. Furthermore, some of the more far-sighted leaders are experimenting in allowing closer association between the inmates and the officers in order to provide another outlet for fundamental emotional needs not to be found even in close association with other inmates.

7. Measures are also being introduced to provide organized activities that will satisfy other emotional needs and thus provide something of a real orientation to the actual conditions of free life.

8. Our better institutions for women, possibly because they have small numbers, and also possibly because they have had a more highly qualified personnel, have set an example for all those in charge of delinquents and criminals. They have attempted to apply modern scientific knowledge to the reorientation of those in their charge.

9. Increasing emphasis by all reformatory experts is placed upon prevention. They have a firm conviction that society can prevent the tragedies of which they see the end-products. Whether this vision of complete prevention can be realized or not, it is certain that proper measures employed in communities would very greatly decrease the number of those who now reach the reformatories.

QUESTIONS AND EXERCISES

1. Trace in outline the origin of separate institutions for the reformation of women (a) in the United States and (b) in England.
2. Outline the development of reformatories for women in the United States.

3. Explain how a severe system of discipline produces prison psychosis.
4. Show how, unless the prisoner is mentally deranged, the development of prison psychosis can be prevented.
5. Diagnose the causes of the delinquency of the eighteen-year-old woman described by Mrs. Hodder in this chapter. Then suggest a better method of treating than is described in the excerpt quoted.
6. Differentiate between the classification system in New York and that in the federal institution.
7. How does the modern treatment of the delinquent woman differ from the former treatment?

Chapter XXXIII

PAROLE AND THE INDETERMINATE SENTENCE

1. PAROLE

Definition and Purpose. Probation and parole are two different methods of dealing with the delinquent. The word *probation* is used sometimes when *parole* is intended, and vice versa. *Parole is the release from a correctional institution of an offender who remains under the control of the correctional authorities in the attempt to find out whether he is prepared to live in free society without supervision.* Parole is thus the last step in a correctional scheme of which probation may be the first step.¹

A parole system cannot operate by itself but presupposes a prison or reformatory. Moreover, in order that parole may be effective, the treatment in the prison or the reformatory must prepare for it. Unless the offender has been so dealt with that his attitude toward society is changed, parole in many cases will fail. The aim of both the institution and parole is to restore the inmate to the community as a vital part of it.² The brief description of conditions in the prisons given in previous chapters indicates that for the most part the prisons and reformatories do not function well in preparing men for parole. Even prison farms and camps with armed guards do not give prisoners that degree of freedom that enables them to show whether they are prepared to use well the greater freedom of parole.

Parole is not a method of relieving pressure of the prison population. It is the final step in the adjustment of the incarcerated offender to free society. It is part and parcel of a method of treatment which begins with incarceration in an institution. It is based upon careful examination of the prisoner. It is preceded in the institution by successful steps in education for a trade and for free social life, with discipline gradually relaxed as the prisoner shows correction of his behavior.

ORIGIN AND DEVELOPMENT

Origin in England. For adults, parole, as it is known in this country, or ticket-of-leave, as it was called at first in England, owes its origin to

¹ Burleigh and Harris, *The Delinquent Girl: A Study of the Girl on Parole in Massachusetts* (New York, 1923), pp. 5-6. For the purpose and meaning of probation see Ch. XIX of this book.

² "Report of the Committee on Probation and Parole," *Proceedings, American Prison Association*, 1920, p. 50.

the unsatisfactory results of the British system of penal transportation described in a previous chapter. The idea was suggested by Mirabeau in a report he made as early as 1791, in which he urged that prisons should be founded on the principle of labor, separation, rewards under a mark system, conditional license, and aid on discharge.³ Sir William Molesworth, made a report to Parliament in 1838 on the horrors of the transportation system in New South Wales. In that report the suggestion was made that some plan of conditional release such as Maconochie had worked out earlier on Norfolk Island should be put into operation. Before Molesworth's report was made, Sir John Franklin, the Governor of Australia, had started a kind of parole system. Maconochie was secretary to Sir John Franklin, and Clay suggests that it was to Maconochie that Franklin owed his ideas. In this experiment of Maconochie's we find the roots of our present system of parole.⁴

After penal transportation was given up, so great became the crowding in the jails and hulks that it was necessary to find some method of relieving the pressure. Maconochie, in the meantime, had returned home and for a short time was made Governor of the Birmingham Jail. Here he applied his system of classification, marks, and release on ticket-of-leave. Sir Joshua Jebb, head of the English prison system, adopted the ticket-of-leave or parole method of releasing men from the overcrowded jails and convict prisons of England. In the meantime, Sir Walter Crofton had adopted the same idea in the Irish prison system, but with an intermediate stage in which the convicts were prepared for a parole by a life of comparative freedom in small groups at Lusk.

The way in which the ticket-of-leave was administered in England gave rise to much criticism. The men were not properly prepared for release, and consequently great numbers of them were released on parole without supervision, and some found their way back into prison after again victimizing the public. In Ireland Crofton not only prepared the men by his so-called intermediate stage for release but used the comparative freedom of that stage to determine whether they were fit for parole. Furthermore when released on ticket-of-leave in Ireland the men were required to report regularly while on parole to the chiefs of police. The result was that the Irish system of parole was very much more successful than the English system and consequently attracted wide attention.

Crofton explained the essential points of the Irish system in a lecture he delivered at Bristol in 1863. His summary is as follows:

The convict system pursued in Ireland simplified is:

1. "Prison training" conducing to the admission of liberated convicts into the home labor market.
2. "Voluntary emigration" practicable by the gratuity every well-conducted convict under any system receives in prison.

³ Ruggles-Brise, *The English Prison System* (London, 1921), Introduction, p. iv.

⁴ Clay, *Our Convict Systems*, pp. 14-17.

3. "Crime rendered a hazardous calling" through the supervision of the liberated convict during the unexpired term of his sentence, and the systematic arrangements made to entail long sentences on prisoners formerly in the convict prisons.

Origin in the United States. Parole in the United States arose from the failure of the penitentiary system described in a previous chapter to reform the inmates. No real advance was made until the reformatory movement grew up about 1870. Such men as Wines, Brockway, Hubbell, and Dwight were deeply concerned with the poor results of the prisons. By reports and by visits they learned of the remarkable success of the Irish prison system. In 1867 Wines and Dwight, in a report to the Legislature of New York, cited the Irish System as "upon the whole the best model of which we have any knowledge" and expressed the belief that its fundamental principles could be applied in the United States with success. Out of their efforts grew the Elmira Reformatory. When this institution was established, the fundamental principles of the Irish System in many respects were written into the law. Here we find, among other features, parole. Thus from Maconochie's experiments in Australia, by way of the Irish System, came into the American correctional system this new device of reforming convicts.

Development in England. In England parole is used in connection with three different legislative devices for the correction of criminals. Parole is granted (1) to those who have been sentenced to penal servitude for grave offenses for which the sentence is at least three years. Paroles are granted only after a certain amount of the sentence has been served. Supervision while on parole is chiefly negative, that is, the paroled man is required to make monthly reports to the police. This applies also (2) to the habitual criminal who has been sentenced under the Preventive Detention Act passed in 1908.⁵ The third type of offender to whom parole is applied is (3) the so-called juvenile-adult, who corresponds rather closely to our young reformatory offender. Sentenced under the Borstal System Act, he may be paroled and supervised by the Borstal associations, which are subsidized private organizations. In the last two cases, each convict is carefully followed up by representatives of subsidized private associations for after-care.

Development in the United States. In the United States practically all of the states having industrial schools and reformatories for adults provide for parole of the inmates, while all but four states in 1937 had provided parole for adult prisoners.⁶

Authority Granting Parole. In 1937 in the United States there were three types of agencies granting parole: (1) central board; (2) governor;

⁵ See Chapter XIX; or Gillin, *Taming the Criminal* (New York, 1931), pp. 234-239; Hobbouse and Brockway, *English Prisons Today* (London, 1922), p. 472.

⁶ Virginia, Mississippi, Idaho, and Florida. The last two had conditional pardons, which they call paroles. *Attorney General's Survey of Release Procedures*, Vol. IV, *Parole* (Washington, D. C., 1939), pp. 20, 44.

and (3) institutional board. There were twenty-nine jurisdictions in the first, seventeen in the second, and seven in the third group. In most of the states in the second group the governor was assisted by an advisor or an advisory board. Experience has shown that a central board is superior to either of the other two forms. The governor is too busy with other important matters to be able to give much attention to the matter, and also he is likely to be influenced by political considerations. The institutional boards, especially in states having a number of institutions, are not likely to have uniform policies and practices in granting parole. Hence there is no uniformity of administration. Even central boards, however, are often made up of part-time appointees or of officials who are already burdened with other duties. In 1937 only ten states, New York City, and the federal government had full-time agencies for granting parole. Most states do not lay down any qualifications for the members of these boards.

Supervision of Parolees. In sixteen states and the federal government the supervision of parolees in 1937 was under the agency that grants parole; in six and the District of Columbia it was administered by some other agency; in three (Florida, South Carolina, and West Virginia) there was essentially no supervision. In at least ten states the supervision of parolees and probationers was under the same agency. Most states have no statutory qualifications for parole officers. Here lies the greatest defect in the parole system. Yet improvement in these matters has developed in recent years.

Parole Eligibility. In thirty-nine of the forty-four states that use parole there were statutory restrictions on parole eligibility. Prisoners were eligible for parole only after having served a specified portion of their sentences. These restrictions prevent the parole authorities from exercising discretion in granting parole at the time they think most propitious for the inmate, and thus interfere with the individualization of treatment.

At the present time parole is the most important means by which men are released from imprisonment in the United States. In 1936 the percentage of prisoners released varied from 94 per cent in Colorado, Indiana, New Hampshire, and Vermont to 1 per cent in South Carolina. Of forty-three states using parole in 1936, twenty-two released by parole over half of all released.⁷

Recently some municipalities have extended parole to the inmates of their municipal institutions. New York, for example, in 1916 set up the first municipal parole commission.⁸

Thus, parole law has had a steady development among the states of this country, especially in the last few years. In most states, however, the selection of parolees is done haphazardly, supervision is inadequate, and

⁷ *Ibid.*, p. 122 and Chs. II, III, V-VIII. The whole volume is the most extensive study of parole in the United States ever made.

⁸ *Ibid.*, Jan. 8, 1916, p. 415.

the function of parole is not fully grasped, although these deficiencies are slowly being corrected.

RESULTS

The earlier estimates published as to the success or failure of those placed on parole must, in the light of more recent studies, be discarded. Earlier studies estimated that parolees were successful in as much as 85 per cent of the cases. Too often these figures were based upon the question as to how many violated the conditions of parole before their discharge. Even in this case the figures were not reliable, since they were made up on the assumption that if the parolee was not returned to the institution during his period of parole, he was a success. The real question is how these prisoners have behaved themselves not only while on parole but after they have been released from supervision. The results with paroled men should then be compared with the outcome of men discharged directly from the institution.

At present we have the results of a number of studies of the outcome of parole. But only three of them studied the after-careers of men discharged from parole. One was made of 510 parolees from the Massachusetts reformatory for men by Sheldon Glueck and his wife, Eleanor Glueck. Another was made by Luman W. Sampson, under the writer's direction, who examined the after-careers of 424 men paroled from the state prison of Wisconsin and the state reformatory of Wisconsin. The study by the Gluecks in Massachusetts showed that out of 510 men who were paroled from the Massachusetts reformatory during the years 1911-1922, 80 per cent were not reformed five to fifteen years later. However, in the third five-year period after parole only 69.2 per cent had been delinquent.⁹ The study by Sampson, made at about the same time as that of the Gluecks, covered 275 men from the reformatory and 149 from the prison. This study showed that from three to eight years after their release from parole 48 per cent of these 424 had failed. Sampson's study is significant in that he was able to study the comparative success and failure of those paroled from the reformatory and those paroled from the prison. While the successes of those paroled from the reformatory were 49 per cent, those paroled from the prison were successful in 55.7 per cent of the cases. The rather wide difference in the results of these two studies may be due to the fact that the study by the Gluecks was of men who had been released from parole from five to fifteen years, while Dr. Sampson's study covered those who had been released from parole from only three to eight years. Further studies of the same kind are necessary before we shall be able to arrive at an approximate figure for the whole country.

The third study was reported by Cass of the New York Prison Association as a follow-up of parolees in New York State in *The Prison World*

⁹ Glueck and Glueck, *Criminal Careers in Retrospect* (New York, 1943), p. 125.

for July-August, 1941. After five years from discharge from parole 82.5 per cent had not been reconvicted of crime. This is in striking contrast with the findings of both the other studies.

The other studies to date are of the behavior of men while on parole. Four such studies in Mid-Western states show a violation rate while under supervision of 18 per cent for Wisconsin, 19.4 per cent for Minnesota, 22.1 per cent (Burgess) and 24.7 per cent (Tibbitts) for Illinois.¹⁰ Tibbitts suggests that in all probability in a follow-up of Burgess' successful cases it could be shown that at least 40 per cent of those paroled failed either during or after the parole period.¹¹ A third study by the Gluecks showed that of 500 women paroled from the Massachusetts Reformatory 76.4 per cent were delinquent within five years after parole ended.¹²

These figures indicate that under the conditions that the men experienced in the reformatories and prisons studied and those they met when released on parole, great numbers of them failed to become law-abiding citizens of the communities to which they went. Nothing points more clearly to the failure of our correctional methods, including parole, than the results of these studies.

A part of these failures is due to the community attitudes toward any one who has been in a penal or correctional institution. Too often the public acts as though it believed that "once a crook, always a crook" is still true. It is hard to get employment for a paroled man in many communities; until 1943 the Army and Navy were closed to paroled men; most of the civil services are closed by statute or by civil service regulations. The Army has later provided that paroled men who have not been convicted of an offense involving moral turpitude may enlist. During World War I because of the need of industry for men, "industrial paroles" were initiated. Prisoners were paroled to work in munition plants and other industries. That of course disappeared with the close of the war when so many discharged soldiers and sailors needed jobs.

While the statistical results are only approximate, stories of how parole works illustrate its inherent character. The case that follows is of a man paroled from one of the Illinois prisons:¹³

¹⁰ The studies upon which these figures are based were made by the following persons: For Wisconsin, Wood, *Predicting Success of Parolees*, A Thesis Submitted in Partial Fulfillment of the Requirements of the Degree of Doctor of Philosophy at the University of Wisconsin (629 Reformatory parolees); for Illinois, Burgess, Bruce, and Harno, *Parole and the Indeterminate Sentence*, Report to the Parole Board of Illinois, 1928 (1,000 Reformatory parolees); and Tibbitts, "Reliability of Factors Used in Predicting Success or Failure on Parole," *Journal of Criminal Law and Criminology*, Vol. XXII, No. 6, (3,000 Reformatory inmates); for Minnesota, Vold, *Prediction Methods and Parole* (Minneapolis, Minn., 1931) (650 parolees).

¹¹ In the most extensive study of paroled cases ever made, that reported in Vol. IV of the *Attorney General's Survey of Release Procedures*, no violation rates were published. For the reasons for not publishing them see p. 314 of that study.

¹² Glueck and Glueck, *500 Delinquent Women* (New York, 1934).

¹³ *The Institution Quarterly* (of Illinois), Vol. XV, Mar., 1924.

Take the case of "X." He was a fourth term. He was a yegg, and a good one. He was born in Canada. As a boy he drifted across the lakes into Ohio; from there he found his way to Chicago. He sold papers on the streets. Cold nights he sought shelter in the corridors of business blocks. He was frequently routed out by the club of the policeman and the night watchman. He became anti-social. Bright and energetic, he was picked up by a gang of safe blowers. He was taught to "boil the soup," "soap the door" and lay the fuse. It was his pleasure and pastime to blow open the strong boxes of banks and business houses. He was finally caught by the Buffalo, New York, police and sent to Sing Sing. After serving his term there he returned to his former associations. He next turned up in the Ohio penitentiary at Columbus. After his release from there he was sent from Chicago to Joliet. A second time he was incarcerated in the Joliet prison. Then the great war came. The government needed men to build its plants and to manufacture munitions. "X" was released under parole and sent to the Rock Island arsenal with eight hundred others. During his last term in the Joliet prison he became a nurse in the prison hospital. While on parole Rock Island the flu filled the hospitals there. A call for help went out. "X" volunteered to leave his paying job at the arsenal and take a position in the hospital that he might be of assistance in saving the lives of those stricken. Through his indefatigable work, and his genial, patient attitude he won the respect and esteem of all the doctors and the nurses. At the close of the epidemic he was given a position in a manufacturing plant. While there he met a good woman who was the mother of a little girl. He wooed her and they were married. The little child fastened the tendrils of her love about his heart. He worked hard. He spent his evenings at home. He became so valuable a man that when the superintendent was taken away to become general manager of a larger plant he took "X" with him. To-day, after five years, this fourth term is living a life he had never known. He is reveling in the love and affection of a wife and a child. The circumstances which drove him to the under-world may never arise again. The parole law gave him his chance.

The following case is a reformatory girl put on parole:¹⁴

A month before her seventeenth birthday a girl was sent to the Industrial School on the charge of being a "lewd, wanton, and lascivious person." She had been born out of wedlock and though the father claims her as his daughter he often accused the mother before the girl of going about with other men. The girl herself began to have sex experiences with school boys at the age of nine. At thirteen she was sent to a semi-private reform school. When after two years she was taken home, the matron reported that she had "abominable habits and all her tendencies were bad." She remained home about a year working intermittently or going around with extremely bad girls and with marines. Since early childhood she had stolen small sums from her parents; at this time she stole valuable jewelry and clothing from an employer where she had been doing housework. In court, where it was established that she had had immoral relations with several marines, she said that she would rather go to a reform school than to return to her home and was sent to the Industrial School for Girls.

Here she remained for one year and ten months. She was reported as sly and deceitful; she stole and lied. She had a quick temper, was susceptible to suggestions and was a good worker.

Two months before her nineteenth birthday she was paroled in a family at housework. During the two years she was on parole eleven housework places

¹⁴ "She Didn't Go 'There,'" *The Survey*, Jan. 15, 1924, p. 398. See also "When Housework Fails," *The Survey*, Jan. 15, 1924, p. 287.

were found for her; two boarding homes were used; and she was an inmate of two hospitals: one for mental examination, the other for operation after having induced an abortion. Once she ran away and was gone several weeks. When found she was in filthy condition and had been immoral many times.

To this wretched, mentally unclean, sexually uncontrolled child the visitor had sought always to give of her cleanest and sweetest thoughts. . . . All to what purpose? When the girl went home a month before her twenty-first birthday the visitor felt that here was a girl being returned to society as marred and twisted as when she was sent out of it.

Because the visitor felt her own failure in this girl's failure she could not keep from voicing her keen disappointment and regret in her parting words to the girl: "I am more sorry than I can tell you that I have not been able in these two years to make you see things differently. Now you are twenty-one and will be held responsible for your actions. Before, you were considered a child and sent to a *training school*; now you are a woman and will be sent to *prison* if you break the laws which have been made for the protection of all. If you keep on the way you have been going I am afraid I shall hear from you next from 'there'!"

Several months went by, however, and the visitor did not hear from the girl from "there." One raw wintry day the visitor came into the office and found her desk literally smothered under a huge bouquet of brilliant carnations. She asked jocularly of the other visitors nearby, "What's the celebration?"—and out of a dim corner of the room a little girl made her way to the visitor. "I wanted you to know that I didn't have to go *'there'* and that I appreciated what you did for me." This was six months after she had been out of the care of the trustees. A year later the visitor received a letter, the closing sentence of which read:

"Please write me soon and tell me what day you can take off. How I want you to come and meet my hubby.

Your old girl,

EMMA.

"P.S. Please when you write don't put any office address on it."

The following statement of a convict once in San Quentin is of interest in giving the estimate of parole by one on the inside:¹⁵

A man startin' out on parole, with th' prison officers backin' him up an' seein' that he gets a square deal has it all over th' guy what does his time an' goes out without knowin' where he's goin' t' sleep th' first night. I been watchin' th' game a whole lot lately. There's more men comes back after doin' their time an' being discharged with five dollars, an' not knowin' what they'll do when they get out than there is men what have been paroled. Five 'r six second-timers blow in t' each guy what violates parole. Don't that go t' prove that parole is a good thing? An' ain't everybody the gainer when a guy straightens up an' does th' right thing? What good does it do t' keep me f'r a twenty-year sentence an' then turn me loose t' do as I please, an' not knowin' where I'm goin' 'r what I'm goin' t' do? An' most fellers feel sore, especially if they've done a long jolt. Not only that, but I knows lots o' guys what has families. Some o' 'em do time awful hard; they do more time in a month than us fellers do in a year. Why? Because they keep thinkin' and worryin' about th' wife and kids. What good does it do t' keep a man like that penned up jus' so long, simply because some judge had a grouch on an' handed him five 'r ten years? It's no wonder so many guys go wrong again. I've talked with lots of 'em what have

¹⁵ Lowrie, *My Life in Prison* (New York, 1912), p. 129.

gone out sore. An' lots o' homes are broken up jus' on that account. Th' woman struggles along, tryin' t' keep her head above water, hopin' she can wait fr her man t' get out, but it's too much, an' she has t' give up. Lots o' divorces happen jus' that way, because th' woman can't keep herself an' had t' get another man jus' f' that reason.

There is no doubt in the minds of those who have given the most careful study to the matter that if properly administered parole is a most important device in the treatment of the criminal. When it fails, it does so either because the institution has failed to prepare the inmate for parole, or the wrong individuals have been selected for parole, or the parole officers are inefficient, or the community has failed in its attitude toward the paroled prisoner. Parole cannot be applied to all prisoners, because there are some men who ought never to be released into society. It must be applied with discrimination, with a thorough understanding of the man put on parole and an appreciation of all the influences that go to make or break a socially disabled individual.

But it must be remembered that about 95 per cent of the inmates of penal and correctional institutions are released into free society in one or another way. Only 5 per cent die in prison. Most of them are discharged at expiration of sentence. The question is whether it is better that they serve their sentences and start their life again in free society without any help but that which prisoners' aid societies can give, or under supervision of parole officers. What evidence is available seems to indicate that probably those coming out on parole adjust better than those discharged at the expiration of sentence, although no thoroughgoing study of the matter has been made.

The parole laws of some states permit the parole authority to keep a man on parole after his sentence has expired. In twenty-one states and New York City in 1937 there were no statutory provisions requiring that a parolee be discharged at or before a particular time. In that year it was found that in seven states the courts have definitely decided "that a parolee remains on parole until he is discharged, even though it may be for the rest of his life."¹⁶

Hence, it appears that in those states that do not limit the parole period by statute, the discharge of parolees from supervision before the Board is satisfied that they will behave is due not to the lack of power but of the proper discretion. As a practical matter often boards do so because they do not have an adequate force of parole officers. It is this condition that leads to most of the valid criticism of parole.

Moreover, when it works, it is an arrangement that is very much cheaper than keeping the convict within prison walls.¹⁷

Financial Results. In New Jersey while the yearly per capita cost of institutional care of prisoners was \$562.10, the cost of care on parole was

¹⁶ *Attorney General's Survey of Release Procedures*, Vol. IV, pp. 288-290.

¹⁷ "Eighteen Years' Experience with a Parole Law," *The Survey*, July 3, 1915, p. 301.

only \$20.43.¹⁸ In New York, which has perhaps the most elaborate and costly parole system in the United States, in 1937 it cost to maintain a prisoner in an institution \$550. The approximate cost of supervising a prisoner on parole for a year in that state was \$60.¹⁹ "The approximate cost per prisoner per year for the Western Penitentiary at Pittsburgh, including the Rockview Branch in Center County, is \$534. (This includes upkeep and repairs but not new buildings or ultimate replacement.) The per capita cost of parole for the State of Pennsylvania (from figures supplied by Mr. Courtland Butler, supervisor of paroles) is \$34.89." "There is also a saving to the county in court costs and costs of prosecution. Men on parole, who are not willing to conform to the dictates of society, can be speedily removed without recourse to the ponderous system of court and criminal prosecution."²⁰

Parole Prediction. For a period of years studies have been made of the success and failure of delinquents and criminals on parole.²¹ More recently there have been attempts to set up a series of tables on which prediction of success or failure of parole might be based. With the validity of these tables we are not here concerned. They give promise of providing information in advance to guide parole authorities in the selection of parolees. But much remains to be done before great reliance can be placed upon them.²²

¹⁸ National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole* (Washington, D. C., June 23, 1931), p. 311.

¹⁹ *Attorney General's Survey of Release Procedures*, Vol. IV, p. 34, footnote 9.

²⁰ Kolakoski and Broecker, "The Pennsylvania Parole System in Operation," *Journal of Criminal Law and Criminology*, Sept.-Oct., 1932.

²¹ Clark, "Supervised Conduct Response of Delinquent Boys," *Journal of Delinquency*, May, 1921, pp. 387-401, 393-394; Flexner and Baldwin, *Juvenile Courts and Probation* (New York), p. 149; Burleigh, "Some Principles of Parole for Girls," *Journal of Criminal Law and Criminology*, Nov., 1918, p. 400; Clark, "Success Records of Delinquent Boys in Relation to Intelligence," *Journal of Delinquency*, Sept., 1920, pp. 177-181; Warner, "Factors Determining Parole from the Massachusetts Reformatory," *Journal of Criminal Law and Criminology*, Aug., 1923, pp. 190, 192; Heacox, "A Study of One Year's Parole Violators Returned to Auburn Prison," *Journal of Criminal Law and Criminology*, July, 1917, pp. 253-258; Clark, "Success Records of Prisoners and Delinquents," *Journal of Delinquency*, July, 1921, pp. 450-451; Pinter and Reamer, "Mental Ability and Future Success of Delinquent Girls," *Journal of Delinquency*, Mar., 1918, pp. 74-79.

²² See Hart, "Predicting Parole Success," *Journal of Criminal Law and Criminology*, Nov., 1923, p. 405 ff. Bruce, Harbo, Burgess, and Landesco, *Workings of the Indeterminate Sentence Law and the Parole System in Illinois*, A Report to the Honorable Hinton G. Clabaugh, Chairman, Parole Board of Illinois, 1928, Part IV; same report was published in the *Journal of Criminal Law and Criminology*, May, 1928, Part II. See also Burgess, "Is Prediction Feasible in Social Work? An Inquiry based upon a Sociological Study of Parole Records," *Social Forces*, June, 1929, p. 533 ff. Glueck and Glueck, "Predictability in the Administration of Criminal Justice," *Mental Hygiene*, Oct., 1929, pp. 678-707; this article is published as Ch. 18 in the same authors' *500 Criminal Careers* (New York, 1930). Vold, *Prediction Methods and Parole* (Minneapolis, Minn., 1931), Ch. VI; see also the same author, "Do Parole Prediction Tables Work in Practice?" *Publications of the American Sociological Society*, May, 1931, pp. 136-138. Tibbitts, "Success or Failure on Parole Can Be Predicted: A Study of the Records of 3000 Youths Paroled from the Illinois State Reformatory," *Journal of Criminal Law and*

RELATION OF CERTAIN CONDITIONS TO SUCCESS
OR FAILURE IN PAROLE AND
POST-PAROLE PERIODS

A number of attempts have been made to ascertain scientifically whether there is any connection between certain conditions in the prisoner himself or in his circumstances which account for his success or failure on parole.

Of these various studies only two, the study by the Gluecks and the study by Sampson, attempted to determine the condition of success or failure by a study, not only of the period of parole, but also of the post-parole period. These two studies give some indication of the factors that make for success after the man has been discharged from parole. Some of these conditions are to be found in his pre-commitment career, some during his period in the institution, some during his period of parole, and some during the post-parole period. The most complete of these two studies is that by the Gluecks.

The following list of twenty-three items from the Gluecks' study give the most significant conditions bearing upon post-parole success:

Prior to commitment:

1. Fairly met economic responsibility
2. Greater age at commission of first offense
3. No arrests preceding commitment to reformatory
4. Lack of offenses preceding commitment to reformatory
5. No previous penal experience
6. Good physical conditions at entrance to reformatory
7. Good mental conditions at entrance to reformatory
8. Good work habits at entrance to reformatory

In institutions and on parole:

9. Occasional or no institutional offenses in reformatory
10. None or less serious institutional offenses in reformatory
11. Little or no mobility in post-parole period
12. Regular church attendance in post-parole period
13. The larger the number of children, the more successful
14. The greater the industrial skill, the greater the success
15. Success during parole

In post-parole period:

16. Good family relationships
17. Compatibly married
18. Favorable hours
19. Favorable home neighborhood
20. Good work habits
21. Economically comfortable
22. Good economic responsibility
23. Constructive use of leisure time

Criminology, May, 1931; pp. 11-50. Sampson, *After-Careers of 424 Paroled Wisconsin Criminals*, A Thesis Submitted in Partial Fulfilment of the Requirements for the Degree of Doctor of Philosophy at the University of Wisconsin, 1933 (ms.); *Attorney General's Survey of Release Procedures*, Vol. IV, Ch. XI; Gillin and associates, *The Treatment of the Wisconsin Prisoner* (unpublished ms.).

Sampson's list provides only three in addition to these. These three are: (1) Those paroled from prison show a greater degree of post-parole success than those paroled from the reformatory. (2) Those who came from urban communities showed greater post-parole success than those who came from rural communities. (3) Those who remained on parole a longer period showed the greatest degree of post-parole success. These findings of Sampson may be peculiar to Wisconsin and may not be of universal application.²³

The most extensive collection of data on the factors connected with success or failure on parole in the United States was that conducted by the staff that operated under the Attorney General of the United States when the survey of release procedures was made. A total of 95,718 cases of parolees from seventy-five penal and correctional institutions in the United States and the District of Columbia were analyzed. Unfortunately owing to lack of funds to complete the analysis the data on only a few factors were statistically studied and published. The following conditions were found to be significantly associated with outcome on parole, while the cases were under supervision. The percentages given are of violation of parole.²⁴

1. Whites, 26 per cent; Negroes, 35 per cent
2. Unmarried persons, 31 per cent; married, 19 per cent. Married with dependent children violated less than those without.
3. Recidivist, 37 per cent; first offenders, 18 per cent
4. First arrest before eighteenth birthday were poorer risks than those arrested for first time after age twenty-two.
5. Offenders sentenced for long terms violated more frequently than those sentenced for short terms.
6. Those unemployed both before arrest and while on parole made poorer records than those employed.
7. Those released into cities of more than 100,000, 37 per cent; those released into communities of less than 2,500 population, 17 per cent
8. Native-born violated oftener than foreign-born.
9. Violators of prison rules violated parole more frequently than well-behaved prisoners.

PRINCIPLES OF PAROLE²⁵

If parole cannot be applied to all offenders, and if its history has shown a considerable number who fail, what are the principles upon which it should be conducted?

1. *Careful Diagnosis of the Prisoners.* We have seen how important it is that the man who has been sentenced to prison should have a careful examination of his physical condition, his mental states and attitudes, and his social history. Even more important is the information obtained

²³ Glueck and Glueck, *500 Criminal Careers*, pp. 256-285; Sampson, *op. cit.*, Ch. 9.

²⁴ *Attorney General's Survey of Release Procedures*, Vol. IV, pp. 488-490.

²⁵ The most recent book on parole to the end of 1944 is La Roe, *Parole with Honor* (Princeton, N. J., 1939). Written by the Chairman of the District of Columbia parole board, it gives an interesting description of the day-by-day work of such a board.

by such an examination in the case of men who are about to be paroled from the institution.

In a number of our states at the present time, including New Jersey, New York, Massachusetts, Wisconsin, California, and Minnesota, such information is obtained either by the classification committee in each institution or by a parole board through its investigators. Recent years have seen considerable progress in the development of a technique of providing information on those appearing before the parole board for release. With more careful diagnosis it will be much more feasible for the parole board to determine those who should be released on parole.²⁶ Most of the criteria upon which parole boards now base their decisions, without such careful examination as indicated above, were thought by some of the early investigators of the subject to be practically worthless.²⁶ But the results of the study in Vol. IV of the *Attorney General's Survey of Release Procedures*, the first study made of the criteria used by parole authorities in the states studied, showed that of the nine points noted above connected with failure on parole at least seven were considered by the authorities. The subtler criteria developed by the various members of classification committees in a few of our best institutions—the psychologists, psychiatrists, and social investigators—are being used more and more in supplementing and correcting those relied on earlier.²⁷

2. *Selection for Parole of Only Those Inmates the Study of Whom Shows That They Will Probably Do Well on Release.* This principle is in contrast to one that is usually followed by parole authorities. In most states where there is a parole law it provides for parole only for those prisoners who have not been guilty of the more serious crimes. Modern penology based upon a study of the experiments in parole has made the discovery that it is not the crime so much as the offender and his history, with all that concerns him, that should be the principal thing in considering parole.²⁸

3. *Selection for Parole of Only Those Whose Release Will not Outrage*

²⁶ Doll, "Classification of Prisoners for Purposes of Training Work and Parole," *Journal of Criminal Law and Criminology*, Vol. XIV, May, 1923, p. 110 ff.; Barnes, in *Journal of Criminal Law and Criminology*, Vol. XIII, Aug., 1922, pp. 186-187. See also Jacoby, "The Psychopathic Clinic in a Criminal Court; Its Uses and Possibilities," *Journal of the American Judicature Society*, Vol. VII, June, 1923, p. 25; Shepherd, "The Psychopathic Laboratory," *Journal of Criminal Law and Criminology*, Vol. XIII, Feb., 1923, p. 485; National Commission on Law Observance and Enforcement, No. 9, *op. cit.*, pp. 308-322; Wilcox, "The Open Door," *Annals of the American Academy of Political and Social Science*, Sept., 1931, pp. 102-112; Gehlke, "Testing the Work of the Prison," *ibid.*, pp. 121-130.

²⁷ Warner, *op. cit.*, pp. 172-207. After studying the Massachusetts parole system, which is supposed to be one of the best in the country, Warner said, "The worthlessness of most of the information now supplied to the board should be apparent." He also showed that in the history of Massachusetts Reformatory there is very little connection between conduct in the reformatory and success on parole. Conduct in the reformatory, however, was judged by the parole board on the basis of how many demerit marks the man had received rather than upon a careful study of his conduct.

²⁸ *Journal of Criminal Law and Criminology*, Vol. XIII, Aug., 1922, p. 265.

*the Sense of Justice of the Community from Which They Came.*²⁹ Another precaution to be taken is that, no matter what the facts about the offender himself show, if parole would outrage the community's sense of justice it would be inadvisable to release the man because thus the whole system of parole might be endangered.³⁰

4. *Proper Employment Should Generally Be Secured Before a Convict Is Paroled.* Lack of employment is one of the most important causes of crime. As we have seen parolees do better on parole when they have employment.

5. *Placement in Proper Surroundings.* Many of these men have come from sordid environments. If they are released and allowed to return to such surroundings, experience indicates that there is very great danger of relapse. Whether the parolee should be returned to his own home can be determined only on the basis of a careful study of the community and the home from which he came, by properly experienced and trained parole officers.

6. *The Institution Must Prepare for Parole.* The institution and parole with adequate supervision are parts of one whole for the correction of the prisoner. The work of the psychopathic clinic or of the receiving station, of the social worker in connection with the institution, of the prison officials, of the classification committee, and of the parole board and parole officers must be coördinated in the purpose of reforming the ideals and habits of the prisoner. Parole is only one part of this plan. This ideal was present in the mind of Crofton as he set up his Irish prison system.³¹ In a number of states the attempt has been made to coördinate the work of the institution closely with that of the Parole Department.³²

7. *Careful Follow-Up Is Absolutely Necessary.* The growing tendency is to emphasize the importance of careful follow-up, with advice, friendliness, and careful efforts to help the man in his new relationships.

8. *Coöperation with Private and Public Social Agents.* In some states most of the actual parole work is done by private organizations, supervised by the Parole Board or Commission. This plan should be used chiefly as a supplementary aid to the parole officials. Often, however, the parole officer will find the private agencies most important sources of information and most helpful in working out the parolee's family problems.

9. *Populous States Should Have a Full-Time Paid Parole Board, or if an Unpaid Board, a Full-Time Staff.* Unification of parole methods and adequate supervision of parole officers seem to be impossible without a board charged with the responsibility of properly administering parole.

²⁹ Butler, "What Prisoners Should Be Eligible to Parole and What Considerations Should Govern the Granting of It?" *Journal of Criminal Law and Criminology*, Vol. XII, Feb., 1922, pp. 549-553.

³⁰ *Ibid.*, p. 555.

³¹ Carpenter, *Reformatory Prison Discipline as Developed by the Right Honorable Sir Walter Crofton in the Irish Convict Prisons* (London, 1872), Chs. 1-4.

³² Doll, *op. cit.*

10. *This Board Should Be Composed Not of Political Appointees But of Men of Intelligence and Integrity Having Experience in Such Matters.* One reason why parole has not been a greater success in this country is the character of the parole officials, especially of the board. Too frequently they have been political appointees selected with reference to their party regularity and usefulness rather than for their understanding of the work.³³

11. *The Responsibility for Paroles Should Rest upon This Board.* Too frequently the legislature has circumscribed the activities of the board by laying down certain conditions under which parole may be granted, such as limiting its operation to first offenders or to those not convicted of serious crimes, or by other more detailed regulations of the methods to be employed. In this matter legislation should follow the same course as in regulating industry. Experience in both the labor field and penology suggests that the board should be constituted and given practically absolute power under a very general law in order that its members may have free scope for all the ingenuity they may possess in administering parole. Parole boards themselves frequently limit their activities by rather rigid rules.³⁴

12. *Parole Success Is Connected with the Extension of the Indeterminate Sentence.* Frequently a man is released on parole and fails to do well apparently because he knows that the end of his sentence is near. Parole ends before the process has been completed by reason of the fact that the maximum of the sentence for which he was sent to the institution has expired. As stated above, the courts in seven states in 1937 had decided that a man could be kept under supervision on parole after his sentence had expired.³⁵ Penological and legal thought is moving in the direction of making the whole procedure of treatment of the criminal, including parole, the function of an administrative board.

13. *Parole Officers Must Be Numerous Enough and Sufficiently Trained to Give Adequate Supervision.* "To make effective these principles of parole, too much stress cannot be laid upon the personnel of a parole department. Every member of such a department should have had a liberal education and specific social service training. Even more important are certain personal qualities in the worker which are essential to the success of the undertaking; good will, good temper, good judgment, and good sense; openmindedness and tolerance; sympathy and imagination; a sense of humor; love of and faith in human nature."³⁶

³³ Colvin, "What Authority Should Grant Paroles? If a Board, How Should It Be Composed?" *Journal of Criminal Law and Criminology*, Vol. XII, Feb., 1922, pp. 545-548.

³⁴ Lyon, "What Should Constitute a Violation of Parole?" *Journal of Criminal Law and Criminology*, Vol. XII, Feb., 1922, pp. 554-557.

³⁵ "Revocation of Parole after Expiration of Sentence," *The North Carolina Law Review*, June, 1922, pp. 46-48.

³⁶ Burleigh and Harris, *The Delinquent Girl*, Studies in Social Work, Child Welfare Series, Monograph No. 3 (New York, 1923), p. 118. For a good statement of funda-

14. *Discharge of Parolees Should Be Entirely in the Hands of the Parole Board.* Otherwise parolees will have to be discharged at the statutory limit of their sentences, whether they are ready for unsupervised free life or not. As an intermediate step between the present practice and that proposed, it might be advisable to provide in the laws for an appeal board, which on application would review the decisions of the parole board.

Interstate Supervision of Parolees. Owing to the fact that some of the inmates of state correctional institutions have legal residence in another state or have families there, it seemed necessary that some arrangement be made between at least neighboring states to supervise parolees from another state. By July, 1944, thirty-eight states had signed agreements for reciprocal supervision of out-of-state parolees. Space does not permit the discussion of the details of these arrangements. Any one interested may find an extended presentation of the matter on pp. 229-233 in Volume IV, *Parole*, of the *Attorney General's Survey of Release Procedures* referred to in footnote 36. This is the beginning of a movement that in time should become nation-wide.

Experience so far raises the doubt whether anything yet devised will effect the reformation of some individuals. We live in the faith that if we were able to handle delinquents in accordance with all the knowledge we have, we should effect the reformation of more than we do at present. But it is still a faith; no single state on earth has as yet been able to have a set-up according to "the heart's desire" of the faithful and to study what happens. But, even so, is it not better to try what can be done with law breakers under as good a system of parole as our taxpayers are willing to support, rather than let men be discharged at the end of the sentence to make their way in a hostile world, especially when we are aware that 95 per cent of all prisoners as discharged sooner or later?

Paroled Men in the Armed Services. As a result of the efforts of members of the American Prison Association, the War Department altered its rules with respect to the induction of those who had been prisoners into the armed services. At first only those who had not been convicted of felonies involving moral turpitude were eligible. In 1942, owing to the work of E. R. Cass, Secretary of the American Prison Association, and James V. Bennett, Director of the United States Bureau of Prisons, the War Department broadened its regulations, making inducible all but those guilty of the heinous offenses of treason, murder, rape, kidnapping, arson, sodomy, pandering, or any crime involving sex perversion, narcotics or other habit-forming drugs, who are otherwise accept-

mental principles in parole, see National Commission of Law Observance and Enforcement, No. 9, *op. cit.*, pp. 324-326; see also "On Parole," *The Survey*, Jan. 15, 1924, pp. 397-399. See also the most exhaustive study of parole, *Attorney General's Survey of Release Procedures*, Vol. IV, Chs. II-X.

able. Paroled men and men on probation must have lived in the civilian community on parole, suspended sentence or probation at least thirty days, if this was a first conviction, or ninety days, if this was a second or more frequent sentence of more than one year. Also the parole or probation must be suspended during the period of his service, if a man is accepted for induction.

At present we have no figures on how many such men were accepted and inducted into the Army. From reports a good many probationers were inducted, and a lesser number of parolees. It will be most interesting to learn how these men comported themselves in the armed services. We know that great care was exercised in their selection owing to the prejudice against them. Hosts of prisoners wanted to fight for their country. The prison magazines were full of pleas by the inmates to be allowed to show that they were just as good soldiers as any and thus redeem themselves in the eyes of the ordinary citizen. A Selective Service organization was set up in most of the institutions to screen out applicants and furnish Selective Service with records on the men who were thought good material by the institutional committee. However, in some states even those applicants who were recommended by the institutional committee were rejected by the examiners of the national Selective Service. The common prejudice against prisoners, held tenaciously by Army officials, dies hard. Obviously the armed services do not want men who are so unstable that they will make trouble, but that is true of non-prisoners. The same screening methods that are applied to the selection of the latter can be applied to prisoners, whether discharged or on parole. Moreover, prison and parole authorities are just as eager that the men they recommend for induction make good soldiers as the Selective Service, for if they fail the Army is confirmed in its disinclination to accept such persons. Further, if the man is discharged dishonorably, he is again under the control of the prison or parole authorities and can be returned to prison for the remainder of his term. But that the Army has modified its strict rules in this matter signifies that a short step had been taken toward a rational attitude toward those who have been convicted of crime.

II. THE INDETERMINATE SENTENCE

Closely connected with the subject of parole is the indeterminate sentence. There is no necessary connection between the two, but historically in the United States they originated together, and parole can never fully function without having the sentence so indefinite that the process of rehabilitation under parole may be continued long enough to make certain its effects.

History of the Indeterminate Sentence. Archbishop Whately in 1832 recommended a kind of indeterminate sentence. He wrote:⁸⁷

⁸⁷ Whately, *Thoughts on Secondary Punishment* (London, 1832), pp. 96, 97.

It seems to me perfectly reasonable, that those whose misconduct compels us to send them to a house of correction, should not be again let loose on society, till they shall have given some indication of amended character. Instead of being sentenced, therefore, to confinement for a certain fixed time, they should be sentenced to earn, at a certain specific employment, such a sum of money as may be judged sufficient to preserve them, on their release, from the pressure of immediate distress; and orderly, decent, submissive behavior during the time of their being thus employed, should be enforced, under the penalty (besides others, if found necessary) of a proportionate deduction from their wages, and consequent prolongation of their confinement.

In 1839 Frederick Hill, inspector of Scottish prisons, and in 1847, his brother, Matthew Davenport Hill, of Birmingham, England, made similar proposals.

Dr. Benjamin Rush, the famous Philadelphia physician, as early as 1787 had argued for an indefinite sentence. In 1847 S. J. May, of the New York Prison Association, made a strong plea that the prisoner should be sentenced for an indefinite period—"until he is a reformed man." In the 1860's, owing to the influence of the Irish prison system upon American prison reformers, agitation began again for the establishment of an indeterminate sentence. The same men were interested in this project as were interested in parole.³⁸ In 1869 under the influence of the prison reformers New York had passed a law authorizing the construction of the Elmira Reformatory. Brockway, who was called from Detroit to be the superintendent, was instrumental in having the legislature of New York pass the so-called indeterminate sentence law.³⁹

The following year the first meeting of the American Prison Congress was held in Cincinnati, and there Brockway read a paper giving his ideas. This paper produced such an impression that the Declaration of Principles adopted at that meeting demanded the indeterminate sentence. Principle 9 in part is as follows: "Peremptory sentences ought to be replaced by those of indeterminate duration; sentences limited only by satisfactory proof of reformation should be substituted for those measured by mere lapse of time."⁴⁰

About 1937 the situation in the United States with regard to the discharge of a prisoner from parole was as follows: In fourteen states, the federal government, and the District of Columbia the law required that the prisoner must be discharged from parole at the completion of his maximum sentence. In eleven states the law provided that he must be discharged at a specified time but gave the paroling authority power to discharge him before the expiration of that period. In twenty-one states and in New York City the length of the parole period was within the

³⁸ Cass, "A Study of Parole Laws and Methods in the United States," *Proceedings, American Prison Association, 1921*, pp. 272, 273.

³⁹ Brockway, *Fifty Years of Prison Service* (New York, 1912), pp. 126, 133.

⁴⁰ Henderson, *Prison Reform and Criminal Law* (New York, 1910), p. 48; *Proceedings, American Prison Association, 1920*, p. 32; *Attorney General's Survey of Release Procedures*, Vol. IV, Ch. I.

discretion of the parole authorities. In seven of these states the courts have decided that the parolee may be kept under supervision until the parole authority discharges him, without reference to his maximum sentence. In this last group for parole purposes that amounts to an absolutely indefinite sentence.⁴¹

Evils of the Limited Indeterminate Sentence. It was seen early that the limited indeterminate sentence had some grave defects. Brockway, in speaking of an inmate at Elmira who was school secretary, said:⁴²

This school secretary...came to the reformatory in May, 1880, under the name of Macauley, an Englishman whose ancestry and previous personal history could not be easily traced. His crime was burglary, second degree, which involved a possible maximum term of imprisonment of ten years. Tall, bearded, athletic, and symmetrical, with a reserved, dignified mien, neither confidence nor suspicion was suggested on a casual acquaintance. In his possession was a certificate in his name of a degree from Oxford University, and as afterwards appeared he was in fact a fairly educated man. He earned and received his parole in a minimum of time by the rules, that is to say, in June, 1881. But for violating the conditions of parole he was arrested and returned to the reformatory in November of that year. After sixteen months, in May, 1883, he was the second time paroled on condition that he take employment at the reformatory on agreed wages, to remain thus more immediately under our supervision. He was made secretary of the schools, librarian, and editor of *The Summary*, which he originated and organized. He instructed a class in drawing, lectured to five hundred upper class inmates on the history of art, edited the annual report of the managers and officers to the legislature, and edited pamphlets on penology prepared for distributing information about this new institution to the citizens of the state and abroad. While thus employed on parole he married and lived in nearby apartments outside the reformatory.

In February, 1884, on complaint of his wife, Macauley's parole was again cancelled and he was placed in custody within the enclosure and put in the initial grade of prisoners, still exercising his school, secretarial, and other functions. In August, 1885, he was the third time paroled and employed on wages and remained in such relation for fifteen months, until November, 1886. After six years with us, the influence of the "indeterminate sentence" gradually weakening by its fault of having a maximum limit, the parole condition was changed, and he took employment in New York City. He endured for a while, but failing to make his monthly certified report of himself, he was on our order arrested in New York in April, 1887. His blandishments induced the magistrate to discharge him before our officer arrived to take charge of him, and we lost sight of him, and he was beyond our further authority at the expiration of the ten years' maximum, May 1890.

Macauley typifies an exceptionally small class of incorrigible criminals. Such offenders, could they be committed under the absolute indeterminate sentence plan, would be continuously held under enough of custodial restraint to protect the public, and it would also be promotive of their own individual welfare. If thus conditioned their capabilities may be made available for the benefit of others also in custody, as was the case during Macauley's parole and employment at the reformatory.

⁴¹ For details as to the states in these three groups see *Attorney General's Survey of Release Procedures*, Vol. IV, pp. 285-291.

⁴² Brockway, *Fifty years of Prison Service*, pp. 263-265.

The maximum limit prevents the carrying out of the purpose of a correctional institution, namely, to keep the man for the protection of society until he has been so trained that he can be released with safety to society and with the promise of complete reformation.

Arguments Against the Indeterminate Sentence. In spite, however, of the evils of the limited indeterminate sentence, there are those, for example, Judge Lindsey, who believe that an absolutely indeterminate sentence is unwarranted in the present state of society.⁴³ They argue that until the public has more confidence in the reformatory influences of penal institutions and in the efficacy of parole, the legislators will be loath to give to parole boards or any other body control over the time a prisoner may be kept in tow.⁴⁴ Yet, it is clear from the new statutes and the court decisions referred to concerning the time a man may be kept on parole that public opinion is slowly but surely coming to see that short sentences and sentences expiring at a definite time, no matter what the condition of the prisoner, vitiate the whole program of treatment of the prisoner.⁴⁵

The tendency of modern penological thought is toward sentencing for an indefinite period, placing the responsibility for release on parole and ultimate discharge in a carefully selected board who shall base their judgments upon a thorough knowledge of all the facts concerning the prisoner and his community. If that tendency realizes its logical outcome, both definite sentences and short sentences will be done away with, and the board will determine the length of his sentence. There is no social reason for releasing a man from safekeeping until society can be assured of its security from his menace.

That this tendency is on the way to realization is shown by the fact that California has legislated into being both a Youth Correction Authority and an Adult Correction Authority, and that two bills providing similar bodies were introduced into the United States Congress in 1944 (H. R. 2139 and H. R. 2140) and hearings were held on them providing two such authorities to handle those convicted of crime in the federal courts. Similar bills have been introduced in the legislatures of several of our states.⁴⁶

⁴³ Lindsey, "What Should Be the Form of the Indeterminate Sentence and What Should Be the Provisions as to Maximum and Minimum Terms, If Any?" *Journal of Criminal Law and Criminology*, Feb., 1922, p. 534.

⁴⁴ *Prison Survey Committee Report, State of New York* (Albany, N. Y., 1920), p. 250; see also National Committee on Law Observance and Enforcement, No. 9, *op. cit.*, p. 145.

⁴⁵ Anderson, *Criminals and Crime* (London, 1907), p. 152. Hobhouse and Brockway, *op. cit.*, p. 80.

⁴⁶ See *Hearings Before Subcommittee No. 3 of the Committee of the Judiciary House of Representatives, Seventy-Eighth Congress, First Session on H. R. 2139 and H. R. 2140*, Serial No. 4; Close, "The California Youth Authority," *Prison World*, Sept.-Oct., 1943; American Law Institute, *Youth Correction Authority Act, Proposed Final Drafts 1 and 2*, 1940; Ulman, "Youth Justice," *Prison Journal*, Jan., 1942, pp. 281 ff; Harrison

What Happens to Discharged Convicts? Closely connected with the problem of parole and of the indeterminate sentence is that of the after-care of the discharged convict. In most of our states to-day the non-paroled convict is discharged at the end of his term less "good time," with a prison-made suit of clothes, a ticket to the place from which he was sentenced, and a small amount of money varying from five to ten dollars. If the prison provides for a payment of wage to prisoners while in the prison, he may also have some earnings of his own.

These men face an unfriendly world without any one to see that they have employment, to look after them and give them advice; and consequently many of them have a hard struggle to obtain a footing in the outside world. The result is that many of them relapse into crime. How many we do not know. Doubtless the lack of after-care accounts for many a man's downfall.

This situation has led to the organization in a number of states of what are variously called Howard Associations and Prisoner's Aid Associations. They provide a home to which discharged convicts may come and remain until they find a position. Those in charge help them to find employment, advise them, and make efforts to see that they "go straight." These organizations are doing good work, but of course they can only touch those who come to them.

If the state is interested in seeing that men do not relapse into crime when they leave the prison and reformatories, it ought to provide supervision for them for some time after discharge. If we had the absolute indefinite sentence, only those would be discharged who could be let out on parole. Then the parole officer would handle the whole problem. Until we get that, the state can do no less than to provide help for those who desire it. This could best be handled by the parole officers who are now used for paroled prisoners.

As I shall have suggested in the chapter on courts, the function of determining how long the convicted person must remain under the control of those dealing with prisoners should be determined not by the legislature nor by the court itself but by a body constituted by the legislature and given the power to administer treatment in the interest of the security of society and the welfare of the individual prisoner. No legislature and no court is wise enough to determine beforehand how long an offender should be kept under surveillance for the welfare of society. Only an administrative board can do such delicate work and then only on the basis of thorough knowledge of the individual. That means the indeterminate sentence, or rather indeterminate treatment, terminated on the basis of facts actually ascertained concerning the individual prisoner. That would provide indeterminate parole as well as indeterminate sen-

tence or indeterminate probation, all based upon the judgment of this authority as to when it is safe for the prisoner to be released entirely from custody.

QUESTIONS AND EXERCISES

1. What is the distinction between parole and probation?
2. Why are they often confused?
3. Outline the origin and development of parole.
4. What was Crofton's contribution to parole?
5. How did parole in Ireland differ from parole in England?
6. Give a figure showing the measure of parole success.
7. Can you suggest any way in which the case of the reformatory girl cited in this chapter could have been better handled? What do you think changed her career?
8. What conditions seem to affect the success of parole?
9. Suggest ways in which the present indeterminate sentence may be improved.
10. What court decisions and what legislation have provided for parolees the practical equivalent of an absolutely indefinite sentence? For details see *Attorney General's Survey of Release Procedures*, Vol. IV, pp. 289-291.

Chapter XXXIV

PARDONS

One of the methods sometimes used to soften the severity of prison discipline but originally devised to rectify miscarriages of justice is the use of the pardoning power. Where it can be shown that mistakes have been made in trials, the laws of most states give the governor the right to commute the sentence or to pardon conditionally or absolutely.

ORIGIN AND DEVELOPMENT OF THE PARDONING POWER¹

The use of executive clemency long antedates the origin of the prison system. The practice in America is an adaptation of an English institution.

In England the system of pardons seems to have grown out of the conflict between the king and the nobles who threatened his power. It was applied to members of his own household when they committed offenses and occasionally to those convicted of offenses against the royal power. It was loosely recognized in the laws of Aethelbert, of Alfred, and of Edward the Confessor. The coming of William the Conqueror greatly strengthened the royal power and brought to England the view that the pardoning power was the exclusive prerogative of the king. The chief exception to this practice was the benefit of clergy, which had been built up by the church in its system of canon law.

Parliament during the period of its growing power, from the Plantagenets to the Tudors, on various occasions attempted to curtail the use of this power by the king. Under the strong Tudors, however, the tendency was in the direction of its exclusive exercise by royal authority. This is witnessed by the passage of the act known as 27 Henry VIII, Chapter 24, which granted exclusive pardoning authority to the crown.

A number of English legal writers, among them Coke, Hobbs, Hale, Chief Justice Holt, Sir William Hawkins, Sir Michael Foster, and William Eden, attempted to work out a theory of the place of pardons in a system of penal law. Beccaria, who admitted the necessity of pardons as long as justice was exercised as in his day, urged that as punishments became more mild, pardon was less necessary. He even argued that the

¹ The most important volume yet produced on the neglected subject of pardons is *Attorney General's Survey of Release Procedures*, Vol. III, *Pardon* (Washington, D. C., 1939). Chapter I of this volume has a summary of the origin and development of the pardoning power that in spite of some errors of interpretation is a very useful summary.

exercise of clemency belongs to the legislator and not to the executor of the laws; that to have a system of pardons as an offset to unjust laws is "to nourish the flattering hope of impunity and is the cause of their considering every punishment inflicted as an act of injustice and oppression. The Prince in pardoning gives up the public security in favor of an individual and by his ill-judged benevolence proclaims a public act of immunity."² His sentiments, however, have been long in finding acceptance.

Blackstone defended the right of pardon as a humanitarian mitigation of the severity of his times when 160 capital crimes were on the statute books.³

The English practice of pardon was followed by the American colonies and was established in the colonial charters granted by the king, who delegated to his representative the pardoning power. During the period of conflict between the royal governors and the colonists, the latter attempted to reserve this power to the general council or body representing the colonists.⁴

Following the independence of the American colonies the pardoning power was vested in different officials in the various states. Since the executive departments in the state governments were looked upon with some suspicion in the early days because of the action of royal governors in the colonies, the tendency was to concentrate power in the hands of the legislature. Consequently in a number of the new American states the governor could exercise the pardon only with the consent of the executive council. In others the governor could reprieve a criminal, and his final disposition had to await the meeting of the legislature. In a few states, among them New York, Delaware, Maryland, North Carolina, and South Carolina, in those early days, pardoning power was vested in the governor alone.⁵

The personnel of pardon boards varied from state to state. In a number of states the governor was a member of such board; in others the lieutenant governor; in still others the secretary of state; and in a few the state auditor or state comptroller. The attorney-general was a member of such a board more frequently than any other state official. In some states the chief justice of the supreme court was a member. In one state (California) the wardens of the two state prisons were members of the board. Thus on the board of pardons in various states was some member of the executive department, in others some member of the judicial department, and in still others those concerned with the management of prisons. In addition, in some states there was a representative of private citizens on the board.

² Beccaria, *Crimes and Punishments* (New York, 1809), p. 46.

³ Blackstone, *Commentaries*, Book IV, pp. 397, 398.

⁴ Jensen, *The Pardoning Power in the American States* (Chicago, 1922), Ch. 1.

⁵ *Attorney General's Survey of Release Procedures*, Vol. III, Ch. III.

In some cases the board is advisory to the governor; in others it is independent. In seventeen states the functions of pardon and parole were combined under the same board.

THE EARLY SOCIAL FUNCTIONS OF THE PARDONING POWER

1. In early times the purpose of pardons was *to do away with miscarriages of justice*. This still remains its chief justification. However, its abuse early led to the suggestion of strict limitations.

2. Early in the history of American prisons *the hope of pardon was held out as an incentive to convicts to work well and behave themselves in prison*. In other words, the prospect of pardon was a device to make prison discipline easy. In the absence of a parole law, a very careful use of pardon did not show bad results, but used too frequently it made a joke of judges, the courts, and the law. Experience in Philadelphia showed that to use the pardoning power as an aid to prison discipline was a mistake. Those refused pardons came to feel that pardons were the result of political influence or "pull" of some kind. That experience and the history of pardoning power for the years since show that the pardoning power needs to be very carefully safeguarded. If there are adequate parole laws and an indefinite sentence, it should be used only to correct a miscarriage of justice.⁶

3. Owing to the overcrowding in early American prisons *the pardon was often used as a method of making room for new convicts*. Crawford, in his first visit to the penal institutions of the United States, reported on his visit to the Ohio State Prison that "whenever the convicts exceeded the number of 120, the governor of the state was forced to grant pardons in order to create room in the prison for the newcomers."⁷

PRESENT-DAY PROBLEMS IN CONNECTION WITH PARDONS

A century's experience with pardons has raised a number of serious questions. Nothing is more needed at the present time than a careful study of the results of present-day pardon methods.

Are Pardons Necessary to Undo Injustices in the Courts? There is little question that under our present methods of judicial procedure justice is not guaranteed. It is possible to "railroad" men to prison just as it is possible for criminals to escape the hands of justice.⁸ Sometimes, although innocent, the accused cannot present the evidence to prove his innocence. Often, if poor, he is not adequately represented by counsel. Also, the Neo-Classical system of penal law, even when modified by many

⁶ Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, N. Y., 1922), pp. 38, 39.

⁷ *Ibid.*, p. 261.

⁸ Goodrich, "The Use and Abuse of the Power to Pardon," *Journal of Criminal Law and Criminology*, Vol. XI, Nov., 1920, p. 339.

modern statutes, assumes that justice is had when each man is given the same sentence for the same crime, modified by the question of the responsibility of each. As a result sentences are often unequal, and only executive clemency can adjust the inequalities. Further, the criminal law is made for general cases and cannot adequately provide for the exceptional case. The judges are limited by the statutes as to the use of discretion they may exercise in any given case. Hence injustice results, which can be remedied only by executive clemency.⁹ Could not probation and parole be used to correct these injustices?

Usually these measures cannot be used because the laws, as appears in the chapter on parole and that on probation, put limitations on the use of probation and parole. If the law in these cases had provided that these men on conviction be handed over to a board of treatment with unrestricted power to handle them as seemed best, or if the probation laws had left the judge's hands untied, or if the parole laws left the decision as to parole to the discretion of the parole board, they could have been put on probation or parole and thus have supported their families. Under the circumstances the use of the pardon power was the only way out of the difficulty. There are some cases, however, even under the proposed board of treatment, or under unlimited parole and probation, that are the result of a miscarriage of justice. These can be handled only by pardon. Remember that about 35 per cent of criminal cases are reversed on appeal and that pardon authorities find a certain percentage in which there has been a clear miscarriage of justice. It is clear that in a small proportion of cases there is social justification for the exercise of the pardoning power. In the absence of flexibility in the laws there is justification of a wise use of pardon to correct injustice.

It is the conviction of a number of the governors who have discussed this matter that not only is justice done to the individual concerned, but the public interest is served best by a wise use of the pardoning power.¹⁰

Is the Pardoning Power Subject to Abuse? Whenever there is a strong public reaction against crime, there is likely to be a good deal of criticism of any governor or pardoning board that releases men from prison. The newspapers are frequently filled with stories indicating that the governor has exercised his pardoning power in an ill-advised way.

Without doubt at certain times there has been reckless release of prisoners by the pardoning authorities. In the California Constitutional Convention in 1878 and 1879, when the provisions on pardons were under discussion, a number of the members of the Convention voiced the belief that pardons had been too freely granted. The working man's party represented in the Constitutional Convention was against the

⁹ For a detailed discussion of these problems see *Attorney General's Survey of Release Procedures*, Vol. III, pp. 296-300.

¹⁰ For illustrations of miscarriage of justice that call for the exercise of the pardoning power, see Borchard, *Convicting the Innocent* (New Haven, Conn., 1932).

pardoning power's being vested in the governor. Other members of the Convention referred to the great abuse of the pardoning power, and one member of the committee on pardons admitted that the power had often been abused in that state in the past because of the pressure put on the governor.

The same expression of belief in the misuse of pardons has been registered in other constitutional conventions, as well as in the press. This objection appeared in the Illinois Constitutional Convention of 1870, in the Kentucky Constitutional Convention of 1890, in the Pennsylvania Constitutional Convention of 1837. In addition to these evidences of dissatisfaction with the pardoning power, Jensen has pointed out that judicial decisions and law writers have expressed the same distrust of the control of the pardoning power of the governor.¹¹

It is probable, however, that many of the stories of abuse of pardons are the result of an effort to make political capital out of a governor's mistakes. Nevertheless, such instances as the pardon of Patrick by Governor Dix show that this power is often subject to grave abuse. Patrick was tried and convicted by a jury of the premeditated murder of his benefactor, Rice. Every effort that ingenuity could suggest and money could pay for was made to have the course of justice stayed and the sentence of death delayed. The state supreme court affirmed the verdict. A governor then commuted his sentence to life imprisonment. Two later governors refused to extend further clemency, but Dix, after a secret hearing of pleaders for Patrick, issued a pardon, accompanied by a statement that after his release he hoped that Patrick would demonstrate his innocence! As we have seen, we have a wide variety of methods in the United States, a testimony to the feeling that this function of government is subject to abuse.

Should Pardons Be the Function of the Governor or of a Pardon Board? It has been argued that the pardoning power involves too great responsibility to be exercised by any one man. In 1939 in the component states of the United States and in the federal government pardons were issued as follows: In five states by the governor, unrestricted and unaided; in four by the governor with the advice and consent of the executive council or the senate; in five by the governor with an advisory officer; in three by the governor with an advisory officer and advisory board; in twenty-three by the governor with an advisory board; and in nine by a board with the governor as a member. Of the thirty-five states with boards to hear pardon applications no two of them have boards organized in the same way.¹²

The following arguments against the pardoning power in the hands of governors have been urged:

- (1) Governors are often influenced by sentiment and emotion rather

¹¹ Jensen, *The Pardoning Power in the American States* (Chicago, 1922), pp. 23-29.

¹² *Attorney General's Survey of Release Procedures*, Vol. III, pp. 96-98.

than by consideration of the welfare of society. (2) Often the governor pardons because of political pressure put upon him. (3) The governor is allowed too much discretion in the exercise of this power. (4) It is a wasteful use of the governor's time, which should be devoted to more important duties. (5) Because of the pressure upon the governor's time he cannot give the petitions the consideration that their importance requires. (6) With changing governors no standard seems to exist on which pardons should be based. (7) If the power is abused, large numbers are thus released from the prisons, and law and justice are brought into contempt. In Illinois, from 1856 to 1876, ninety-two persons were sentenced to life terms. During this same period thirty-six were pardoned. Only one had served more than ten years. The pardoning of 396 prisoners at Christmas time, 1912, by Governor Donaghey, of Arkansas, as a rebuke to the convict labor system of that state, caused considerable discussion. Other governors by their actions have also called the matter to the attention of the public. Among governors who have had extensive pardoning records are Blease, of South Carolina; West, of Oregon; Comer, of Alabama; Small, of Illinois; and Ferguson, of Texas. Not only large numbers of pardons, but the pardon of notorious criminals, excites adverse comment. Thus when Governor Dix pardoned Patrick, convicted for the murder of Rice, without consulting the trial judge or the prosecuting attorneys, a great wave of protest arose in the newspapers. Even reputable journals were led to propose that no man should have the power to pardon criminals on his own individual authority.

Boards of Pardons and Parole. The device of a board of pardons and parole was suggested by the abuses to which we have referred. It was felt that if political pressure was brought to bear upon a board, the purpose of the pressure would not be so likely of accomplishment as when exercised upon an individual. Experience suggests that a pardon board is superior to a governor as a source of pardons. In 1939 seventeen states had such a combination.

Standardization in the Administration of Pardons. It has been suggested that the evils of the pardoning power, whether by a single man or by a board, could be obviated were it possible to work out a system of standards according to which pardons would be granted. Almost every governor has his own standards. This is illustrated by the table of different types of clemency granted by the governors of Wisconsin 1901-1934:

An inspection of this table shows that each governor had a different set of standards on which he granted clemency. The study by Oldigs showed that among these nine administrations "the governors evidently used no fixed rules or standards by which to judge whether a pardon should or should not be granted."¹³

¹³ Oldigs, *Pardons Granted in Wisconsin, 1901 to 1934 Inclusive*, A Thesis Submitted in Partial Fulfillment of the Requirements for the Ph.D. Degree, University of Wisconsin, 1940 (ms.).

PARDONS BY ADMINISTRATION AND TYPE

Administrations	Term	Total		Full Pardons		Conditional Pardons		Commutations of Sentence	
		Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent
Total		1,976	100.0	458	23.2	784	39.7	734	37.1
La Follette, R.	1st	13	100.0	3	23.1	9	69.2	1	7.7
	2nd	16	100.0	2	12.5	14	87.5		
	3rd *	14	100.0	3	21.4	6	42.9	5	35.7
Davidson	1st *	22	100.0	2	9.1	18	81.8	2	9.1
	2nd	49	100.0	17	34.7	23	46.9	9	18.4
	3rd	58	100.0	20	34.5	22	37.9	16	27.6
McGovern	1st	50	100.0	17	34.0	24	48.0	9	18.0
	2nd	76	100.0	18	23.7	21	27.6	37	48.7
Philipp	1st	123	100.0	49	39.8	28	22.8	46	37.4
	2nd	97	100.0	29	29.9	35	36.1	33	34.0
	3rd	123	100.0	60	48.8	21	17.1	42	34.1
Blaine	1st	178	100.0	32	18.0	90	50.6	56	31.4
	2nd	225	100.0	31	13.8	117	52.0	77	34.2
	3rd	299	100.0	48	16.1	156	52.2	95	31.7
Zimmerman		230	100.0	58	25.2	121	52.6	51	22.2
Kohler		43	100.0	5	11.6	16	37.2	22	51.2
La Follette, P.		194	100.0	11	5.7	30	15.5	153	78.8
Schmedeman		166	100.0	53	31.9	33	19.9	80	48.2

* The third administration of R. La Follette and the first of Davidson were for one year each.

In a number of states the regulations, either in the constitution or in the statutes or laid down by the pardon authority itself, make some attempt at standardization. In general, however, it may be said that no set of standards that deserve the name has been universally accepted in this country. At the best, since the matter of pardons is an attempt to correct injustices due to the imperfections of our court system, each case must be considered on its own merits. Only very general standards can be worked out, such as whether new evidence bearing upon the case should be heard; whether the recommendation of the judge, state's attorney, jurors, and so on, should weigh; whether the condition of the man's family or the health of the man himself should have weight in determining the question of pardon; and whether pardons should be granted because of a technical error in the trial. Upon some of these there is a growing consensus of opinion, but so diverse is the practice at present in our states that it would be impossible to set up standards that would be generally accepted. In the meantime, therefore, whether pardons be administered by the governor with or without advice, or by a board of pardons, the best thing we can hope for is that the authority will keep solely in mind the public interest and make its determinations accordingly. There is, however, grave necessity that before a pardoning

authority act in any given case a very careful study be made of the case.

That a board of pardons working according to a set of principles and a policy clearly set out to guide it in its work give different results than a governor's unadvised decisions is indicated by the following table from a study of clemency granted and denied by the same governor in Wisconsin.¹⁴

Fundamental Pardon Policies

A. Types of cases to be considered:

1. Those in which later evidence has been discovered showing the innocence of the convicted, but in which the court cannot take action.
2. Those in which there was a plea of guilty based on misunderstanding of the nature of the charge.
3. Those in which there was a plea of guilty on the promise that an officer of the court would intervene to secure a short sentence or probation.
4. Those in which the previous history of the prisoner and his attitude in the institution indicate that he would probably be well behaved if released, and who cannot be paroled under the present statutes, and who cannot have his sentence reduced save by an act of clemency.
5. Those who would be safely paroled if the sentence were reduced.

B. Principles to be followed:

1. Disregard of political, organizational or religious affiliations.
2. Due (but not undue) regard for the attitude of the people in the community from which he was sentenced.
3. Careful investigation of the judicial history of the case (such as is referred to in A, 1-4 above).
4. Careful investigation of the background of the prisoner before he was committed to the institution—social, economic, psychological and emotional backgrounds.

<i>Executive Clemency</i>	<i>No Pardon Board, 1931-1935</i>		<i>Pardon Board, 1935-1937</i>		<i>Total Cases</i>
	Number	Per Cent	Number	Per Cent	
1. Full Pardon	11	2	42	4	53
2. Conditional	28	4	18	2	46
3. Commutation	154	22	177	17	331
4. Denials	497	72	782	77	1,279
Total	690	100	1,019	100	1,709

Do Pardons Break Down Respect for Law? It has been charged that the use of the pardoning power breaks down the respect of criminals for the law because it furnishes the hope that the sentence may be commuted or the man pardoned. If there is any ground for believing that pardons are not in the interest of the public but the result of pressure, then without a doubt the abuse of the pardoning power does lessen respect for law and destroys the deterrent effect of penalties. If, however, pardons are administered with care and solely to correct injustice, they ought not to diminish respect for law. There is no evidence that when so

¹⁴ The following statement of policies and principles was adopted by the first Pardon Board of Wisconsin appointed by Governor Philip La Follette in 1935. The writer was a member of this Board.

administered they undermine confidence in the machinery of justice or in the value of executive clemency.

Parole vs. Pardon. It has been urged that if parole was made flexible enough to allow the parole board to act at its discretion without the limitations now usually found in the parole statutes, we should not need pardons. The Louisiana pardon board in 1914 refused to grant any pardons because the state had just enacted a parole law.¹⁵ It is also said that a good parole law will do away with the need of conditional pardons. The latter is true, for conditional pardon was the predecessor of parole. But a parole law, however flexible, would not take care of miscarriages of justice resulting in the conviction of innocent people. A board of treatment, already discussed, having entire charge of individuals convicted by the court would also not solve the problem, unless that board had the power to pardon. Pardon there must be no matter where the power is lodged.

That there is place for executive clemency in our scheme for the treatment of criminals, so long as the machinery of justice is as antiquated as at present, and so long as we have not perfected our methods of handling men after the courts have pronounced them guilty, is unquestioned.¹⁶

The pardoning power is a confession of human fallibility, a response to humanity's protest against the injustice sometimes worked by our machinery of justice. So long as we insist on our antiquated methods of ascertaining guilt and of meting out justice according to a system of punishments based on the acts men do rather than upon the nature of the man and the circumstances under which he committed the proscribed act, and on setting forth in the law what he must suffer for any given misconduct without respect to the social results of his punishment, we must have some way of escape from intolerable injustice. With all its faults, the pardoning power provides that escape.

If a change should be made in the function of the court as suggested in the chapter on the courts, so that its function would be confined to the determination of guilt or innocence, and the treatment should be delegated to an administrative board, then the matter of pardon might very well go over to this board. The Minnesota Crime Survey has argued in favor of one board handling probation, parole, sentencing, and pardoning.

TENDENCIES IN PARDON PROCEDURE

Executive clemency has not received the attention by penologists that they have accorded to probation, parole, and prison reform. Yet suggestions for the improvement of clemency practices have been made and

¹⁵ *Journal of Criminal Law and Criminology*, Jan., 1915, p. 771.

¹⁶ Smithers, "Nature and Limits of the Pardoning Power," *Journal of Criminal Law and Criminology*, Nov., 1910, p. 552.

experiments have been tried. So far as tendencies in pardon policies and principles can be made out, they may be summarized in the following way:

1. There has been a trend to transfer at least the investigation of clemency applications from the governor to an adviser, a group of advisers, or to a board.

2. In a number of states there has been a movement to transfer the whole problem of investigation and decision to a board. Minnesota in 1857 was the first state to provide for a pardon board. Sometimes the governor is a member of such board.

3. It has been urged that both pardons and paroles be handled by the same board. In 1915 such a bill was introduced into the Massachusetts legislature. In 1929 a similar bill was introduced in the Wisconsin legislature. The committee that studied prisons in New York in 1920 recommended the same plan.¹⁷ But the authors of the *Attorney General's Survey of Release Procedures* are against such an amalgamation of functions.¹⁸ Their arguments are (1) that the purposes of the two processes are different and require different qualifications and (2) that combining these two functions under one board will only tend to perpetuate the present confusion between pardon and parole. Granted that the functions are different in purpose and that there is confusion, yet the investigation required for each is similar in all cases except in the instance of legal questions in cases of pardons. Even in parole cases legal questions are often met with. In pardon cases a lawyer or lawyers in the membership of the combined board would be able to handle the matter. The present confusion arose when parole and pardon were considered by separate authorities. The confession is due, not to the authority exercising control, but to lack of careful thought by both authorities as to the difference of function between pardon and parole. Furthermore, in many states it would be impossible to have two such boards because of expense and unavailability of properly qualified personnel. Also it may be urged that the same men working on both pardon and parole cases would probably result in clarification of their minds as to the difference in function between pardon and parole. In addition, many pardon cases are decided, not merely on legal grounds, but also on the backgrounds and previous history of the applicant. A board combining both functions would probably through its close contact with the prisoners in the institution and the investigation of the parole officers have a much more adequate basis for a just decision than a pardon board operating separately. Finally, combination of both functions in one board would obviate the difficulties inherent in the close coöperation between the paroling authority and the pardoning authority. No evidence has been produced to date to show that in those states that have the functions of pardon and parole

¹⁷ *Journal of Criminal Law and Criminology*, May, 1915, pp. 114, 115.

¹⁸ See Vol. III, pp. 300-302.

combined in one authority the results are worse than in those in which the functions lie in different authorities.

4. Penologists have discussed without coming to any decided conclusion the questions as to whether justices of the courts should be members of such a board and whether the board should be made up of state officials. On the whole the preponderance of opinion seems to be in favor of having an independent board.¹⁹

5. With the emphasis on pre-parole and pre-probation investigation as the basis of decision, there has grown an emphasis on the importance of a like pre-clemency investigation. Many governors are now insisting that such an investigation be made, even when they have the sole power of clemency.

In the matter of pardons, as in all other matters pertaining to convicts, it is coming to be recognized that only as science and good sense are applied can present abuses be eliminated.

Is Prediction Possible in Clemency Procedures? Attempts have been made to work out experience tables in connection with probation and parole on the basis of which authorities concerned could select for probation or parole those who would be most likely to succeed. In spite of the divergent results obtained in different parts of the country and the various methods employed, there is no theoretical difficulty to such proposals. In Illinois such tables are being used as guides by the parole authority. My associates and I have reviewed these various projects in connection with an attempt to devise such tables for the state of Wisconsin. We found that the methods used in Illinois and Massachusetts would not aid in Wisconsin, and we devised slightly different methods to meet the situation in that state. However, we were driven to the conclusion that the data found in the records is probably not the most significant for future conduct, yet can be used with some confidence by the judges and parole authorities.²⁰

After making these studies in Wisconsin and while serving as a member of the Pardon Board of Wisconsin, it occurred to me that such experience tables based upon a study of those granted executive clemency in that state over a period of years might be useful to such a board. I had three studies made, only two of which applied statistical methods to the problem of predicting outcome after clemency was extended. Although the results were rather disappointing, a number of rather significant findings came out of the work.

Illustrating the general observation that pardoning authorities recognize no generally accepted theory of the function of clemency were the results of the first two studies. The first, covering all grants of clemency in Wisconsin from 1901 to 1935, indicated that, aside from the common

¹⁹ Smithers, *op. cit.*, p. 558.

²⁰ This material is now in manuscript form, and we hope to have it published as soon as the war is over.

acceptance that the function of clemency is to correct miscarriages of justice, each governor had different conceptions of its function. In the reports of the governors to the legislature giving their reasons for the granting of clemency sixty-five reasons were given. This in itself indicates the wide variety of theories of the nature and function of clemency held by the different governors during this more than a third of a century. The six reasons each of which accounted for more than 10 per cent were: "doubt of guilt," 10.2 per cent; "excessive sentence," 12.2 per cent; "good institutional record," 20.3; "dependents," 14.3; "first offense," 25.8; and "to make eligible for parole," 14.4.

The second study covered the reasons given by the last three governors before the study was undertaken, one term each by Schmedeman and Kohler, and two terms by P. La Follette. Schmedeman and Kohler together granted full pardon in 28 per cent of the cases, 23 per cent conditional, and 49 per cent commutations; La Follette granted 12 per cent full pardon, 11 per cent conditional, and 77 per cent commutations. It is clear that La Follette used commutation much more frequently than the other two to make men eligible for parole. Even in this late period the three governors had no common philosophy concerning clemency.

The third piece of research attempted to learn whether from the data in the records of the governor's office an experience table could be set up that would assist the clemency authority in determining whether or not an applicant was a good prospect. It covered only the period from 1920 to 1938 because of the poor records in the period 1901 to 1919. In the period 1930 to 1938 six factors were found that had statistical significance for outcome in the subsequent history of those granted executive clemency. These were: (1) Those guilty of sex offenses showed a better subsequent record than those convicted of crimes against person or property. (2) Those aged twenty-one to twenty-three at time of conviction and those thirty-six and over did better than the average. Those under thirty at date of clemency and those thirty-six and over made a better record than the average. (3) Those with no previous criminal history got into trouble again less often than those with a previous criminal record. (4) Those with no accomplices made a significantly better post-clemency record than others. (5) Those from communities of 100,000 and over made poorer records than those from the smaller places. (6) Those unemployed at the time of their crime had a poorer post-clemency record than the average.

However, when we analyzed the previous period, 1920-1929, and compared the results with those found in 1930-1938, we found only two factors that remained consistently significant in both periods, previous criminal history and number of accomplices. Those two do not offer much to a clemency authority, but they are worth keeping in mind.

As the result of our studies we concluded that, while the two factors

we found persisting through eighteen years in Wisconsin provided some guidance, and the six shown to be significant in the most recent period might well be used by the authorities, the data in the records did not contain the more significant facts as to personal history and characteristics on which future conduct could be more certainly predicted. We also were convinced that the pardon board or the governor's office should assemble such data and analyze it in the endeavor to find factors that could provide guidance in the administration of this important function of clemency. Only such methods can redeem pardons, as well as parole and probation, from public suspicion, better protect society, and better adapt the treatment of prisoners to their social rehabilitation.

QUESTIONS AND EXERCISES

1. Trace the history of pardons.
2. What are the dangers of pardons, if they are used for any other purpose than the correction of injustice?
3. Assume that a man appealed to you as governor for pardon in whose case there had been no mistake made in trial and conviction and that the only basis of appeal was that his family was in great need of him; assume also that under the state law he could be paroled and that your study of the case led you to believe that he would do well on parole. Would you exercise your right to pardon? Why?
4. Assume that a mother's pension law in the state provided for the family, what would you do: (a) in case your study led you to believe that the man would not repeat his crime? (b) in case you found that his previous record was bad, that he had not supported his family, or that he drank habitually?
5. What considerations favor a board of pardons and paroles to handle applications for pardon?
6. Outline the elements of a good pardon law.

Chapter XXXV

A PROGRAM OF TREATMENT AND PREVENTION

As one looks back over the history of penal treatment, he cannot fail to be impressed by the somewhat meager results of society's immemorial struggle with crime and the criminal. In the light of modern science the experiments of society in dealing with the criminal have been based upon false theories. An unsound social psychology lies back of most penal treatment and has given it its often brutal and unsocialized character. Unconscious of the rôle of custom, tradition, superstition, and prejudice, society has largely based its treatment of the criminal upon fear, hate, lust for power, and selfishness. Treatment has been begotten of the emotional reaction to a situation rather than of a rational consideration of the conditioning factors of crime and of the purposes of punishment. Resting upon an erroneous social philosophy, it has disregarded the welfare of the individual and sacrificed large numbers in the supposed interest of the state, at the same time allowing others to escape. The prison system motivated by the false theory that the prison should be a place of repression instead of an agency to reorganize the offender's plan of life and his habitual responses to life situations, has been guilty of tyrannies long outgrown in other social institutions. Because of an antiquated judicial system, too often justice has indeed been blind, with consequent injustice to the weak, the ignorant, and the witless and lack of justice to the rich, the cunning, and the professional criminal. The findings of modern psychology and sociology have had too little application in the campaign against crime. In short, the limited success of society in its struggle with criminals has been due to the use of antiquated methods founded upon an unscientific basis.

Yet in the years since this book was first published some progress has been made. In some courts procedure has been modernized. In certain states provision has been made to secure before sentence is pronounced information as to the physical, mental, emotional, and social history of the accused. More careful study of the prisoner in the institution—of his history and backgrounds, of his physical and mental state—is made in an increasing number of cases before decision as to whether he is fit for parole or pardon. In a few cases prison authorities now take account of the results of these studies in attempting to adjust institutional treatment to the individual.

While the indeterminate sentence is nowhere in this country or abroad strictly indefinite, California has provided that certain convicted persons be handed over to a classification and sentencing board who determine, after a study of the findings of an investigation of his whole history, what shall be his sentence; and Illinois has ordained that for certain crimes the stretch between the minimum and maximum sentence shall be greater—from one year to fourteen years, from one year to twenty-five years, and from one year to life—thus giving the parole authorities greater leeway in determining on the basis of their study of the individual when he shall be placed beyond the walls. California has put into operation the Youth Correction Authority proposed by the American Law Institute previously discussed. In several other states bills have been introduced in the legislatures intended to set up such an authority. Congress has received bills, not only to establish such an authority of youthful federal offenders, but also an Adult Correction Division.

The use of probation has been extended, not only geographically, but also in the sense that the legal definition of those who are eligible has been liberalized. Likewise with parole. The scientific study of the criminal has steadily progressed. We know more to-day than ever before of what makes an offender, although that "more" is little enough. Objective studies of the results of probation and of parole are being made. From the studies already made can be formulated prediction tables as to which prisoners should be admitted to parole or probation.

Inch by inch the prison authorities are introducing scientific methods of studying the inmates in order that they may know better how to classify and treat them. Gradually prisoners are being classified not by kind of crime committed, by age, or by number of convictions, but by what is revealed in careful examination of each individual and of his whole history. Prisoners gradually are being segregated in institutions of different grades of security, and with different degrees of severity of discipline. The "silent system" has disappeared from many of our prisons and reformatories. Limitations upon communication with relatives and friends are gradually being lessened. Educational systems have been developed in some prisons and reformatories to an unprecedented degree. Plans for getting men outside the walls upon farms and in camps have been considered by an increasing number of penal authorities and have been put into operation by some. Hospital facilities have increased both in capacity and in equipment, albeit with little more than glacial speed. The training of prison officials has been started, although to the public the chief requirements are still "beef" rather than brains, while to the inmates the guard is still "a bull," not a gentleman. The training of policemen and detectives has been discussed somewhat widely, and here and there has been actually put into operation.

An increasing number of states have unified their systems for the detection and apprehension of offenders. Under the New Deal the fed-

eral government has extended its jurisdiction to crimes that have an interstate aspect, such as kidnapping persons and taking them across state lines. Probably further extension of its authority will occur if the state and local police are not able to do a better job of detection and apprehension. It also coöperates with state and local authorities through its Bureau of Identification situated at Washington. Gradually it is becoming clear that crime is not a local but at least a national matter and that success in repressing crime rests upon a closer coördination of the various authorities concerned with it.

Whatever is to take the place of the past strategy and tactics in the war on crime must take account of all that has been learned touching the casual factors of criminality and the technique of developing or altering human personality. Recent advances in science have thrown upon human nature a light never before available. In any program of penal treatment this knowledge must be applied.

A RATIONAL PROGRAM FOR THE TREATMENT OF THE OFFENDER

The first question to consider in mapping out a penal program is, What is the purpose of punishment? Retribution, only a survival of a natural reaction to what was believed to be socially injurious, as we have seen, leads to results socially undesirable. Any method of treatment that deprives one of his liberty may have an intimidating effect upon the criminal. Deterrence will be adequately provided if the convict is treated by any method that experience dictates as humane, reformatory, and protective to society. For most people harsh measures are not necessary. For the few professionals swift and certain segregation will be sufficiently deterrent. Furthermore, if the offender can be reformed, society will be protected and the man himself restored to usefulness. May we not say, therefore, that the main purpose of any program of penal treatment is the protection of society? Subsidiary thereto are intimidation, deterrence, and reformation.

Based upon a clear perception of the purpose of punishment and the application of all that science has to teach, a rational penal program will include the following items:

1. A modern system of identification, including (a) fingerprint; (b) study of the type of crime and the technique by which committed; (c) a library of records of crimes and criminals; (d) laboratories in which criminals and materials may be studied by scientific methods.
2. A police force carefully selected and thoroughly trained in the best known methods.
3. Places of detention for those accused of crime that assure their appearance at trial but that do not outrage every canon of decency and that do not demoralize.
4. A system of bail bonds high enough in amount and secured by a

proper amount of property to ensure appearance and permit release until trial, thus obviating unnecessary detention in jail or other places of detention.

5. Thoroughgoing reconstruction of criminal procedure in order to secure a speedy trial, bring out the facts concerning the crime, and enable the court and jury to ascertain the guilt or innocence of the accused. The use of a laboratory to determine the facts about the physical and mental condition of the accused and social investigation by probation officers or other persons in order to have a basis on which to determine treatment. In connection with reformed procedure there must be trained court officials, judges, experts, social investigators, parole and probation officials.

6. Methods of treatment directed to social protection but keeping in mind the social purposes of deterrence and reformation. Such methods will include (a) fine for certain adult offenders, provision for restitution and the payment of court costs to teach the lesson that transgression entails the deprivation of privileges; (b) probation for all offenders, including misdemeanants and felons, a careful study of whom indicates that they may safely be trusted at large under supervision; (c) institutions for those who cannot be left at large but must be subjected to a period of institutional treatment. These institutions must be adapted to the nature of the criminal on the basis of the thoroughgoing investigations mentioned above. They include (1) hospitals, asylums, and colonies for the physically and mentally ill or defective; (2) schools for those who are victims of their ignorance or unskilfulness but who are able to profit by training; (3) industrial prisons for the hopelessly incorrigible; (4) parole granted after a proper period of training and a study of the characteristics of the individual under trained parole officers numerous enough really to supervise their charges; (5) absolutely indefinite sentences, the termination of probation, incarceration, and parole to be determined by a board composed of judicially minded experts possessing the power to transfer an offender to other institutions better adapted to his needs and to recall released offenders who offend again after proper trial at large.

7. Such change in the statutes as will limit the function of the trial court to the determination of the guilt or innocence of the accused and statutory provision for a board of treatment, the responsibility of which shall be to take the offender convicted in the court and, after careful study of all the facts provided by careful physical, mental, and social investigation, determine the kind of treatment to which he should be subjected. This board will determine whether he shall be put upon probation and, either itself or through a subdepartment of probation, determine the length of probation. It should also determine whether he should be recalled from probation and put into an institution. It should also, either directly or through a department of parole, handle the cases of those

prisoners who are ready to be tried out in real life and determine the length of time they should be kept on parole. Likewise, it should have the determination of the length of a man's time in prison. Thus the various agencies and methods dealing with the correction or custody of the offender would be unified in one board of treatment, and the responsibility for results would be placed directly upon the board instead of, as at the present time, being divided between many different authorities, even those authorities being handicapped by limitations set by statute.

The statutes should provide for a review of a case by a court or separate board to determine whether a man is being held in accordance with the aims of the law, much as the writ of habeas corpus is used to determine whether a man under arrest or an insane person is held legally. This board would have to justify its work, not only before the bar of public opinion, but before the reviewing court or board, with which would lie the determination of the propriety of the treatment given the prisoner by the board.

Such a program will discover and segregate those who commit crime because of physical or mental defects, will provide a graduated scheme of correction based upon a careful study of the individual characteristics and history, will either deter the habitual criminal or place him safely apart from his fellow men, will individualize the treatment of each delinquent according to his characteristic tendencies, will reform the reformable, will make justice speedy and certain, and will, to the maximum degree possible, protect society from the menace of an increasing army of criminals and the burden of their detection, trial, and care.

A PROGRAM OF PREVENTION

Any program of treatment begins with end results. We cannot be content with gathering up and trying to mend those who fall over the precipice; we must build a fence along the top. We shall not be satisfied until we have shut off this growing stream of criminality at its source.

The increase of knowledge characteristic of the last seventy-five years has made clear to us some of the causative factors of criminality hitherto unknown. A program of prevention is encouraged by the light that science has thrown on the nature of human beings through psychology, psychiatry, the theory of heredity, and study of the influence of economic and social factors, and of political organization, upon conduct. While the analysis of causation in social conduct has not yet proceeded far enough to enable us to be certain of the exact weight to be attributed to each set of factors, it has shown us where lie the springs of criminality. Experiment is now testing out the value of the different elements in the program of prevention suggested by these studies. It is therefore possible to offer an outline of a program for the prevention of delinquency.

Control of Population. As we have seen, crime varies directly with the

density of population and with the intermixture of people of different races and nationalities having different customs, traditions, ideals, and habits. If there is a great surplus of population in a given country in relation to the economic organization and the industrial needs, economic factors of criminality become important. There are only two ways to control the *quantity* of people in a country: first, by control of immigration, and second, by control of the size of the family. The immigration laws can provide the first, the second can be managed only by the inculcation of ideals of proper education and comfort for children.

By the *quality* of population is meant the native ability in the stock necessary to adapt people to the circumstances of life. With the native population this can be controlled only by negative or positive eugenics. Defective stocks can be wiped out by sterilization or segregation so that they will not reproduce their kind. Whether research will or will not make it possible for us to ascertain how far sterilization can be applied without injustice, it certainly can be applied as a public health measure to defectives who have not yet been sentenced to a penal institution. If our communities will provide proper guardianship of the less menacing defectives, many of them, who if neglected would become criminals, may be saved from a career of criminality.

Segregation, however, has much more general approval than sterilization, and, while it adds greatly to the expense of care, some of the recent experiments in colonies show that a certain proportion of the defectives can be cared for at a rather small expense. In the meantime our penal institutions should follow the example of New York and Massachusetts in providing institutions for defective criminals.

Positive eugenics has been proposed as the other side of the method to secure a better quality of people. Galton proposed that it be made a kind of religion, that people should be frowned upon who pay no attention to the characteristics of the stock with which they mate. Hitherto, romantic love has quite largely controlled matings, but now it is suggested that people give consideration to the history of the family into which they propose to marry. Probably with the spread of the knowledge of the laws of heredity increasing attention will be given by young people to this matter.

Development of a Social Personality in Children. Studies in child psychology and the explorations of the psychoanalyst have revealed that many antisocial attitudes have their roots in early childhood. Repressions often begin then that later find expression in crime. Grudges are begotten that determine the whole future career. Attitudes toward authority, whether it be parental, legal, school, or what not, often are begotten by the experiences of children before three years of age.

As the child goes through his development in later periods, care must be taken to socialize his personality. The teacher in the school, some bully on the playground, or the attitude of some important person in the

church, on the one hand, may give a bent to his character through an emotional shock that will produce criminality; or, on the other, people with understanding and good-will may so guide his developing character that he will adjust himself to the circumstances of life and become a useful citizen. Society will not go wrong if it throws about its children and youth, personalities who understand how to guide the groping spirit into proper adjustment in a new world. Such an "understanding heart" is the secret of successful parents, teachers, clergymen, social workers, recreation leaders, and neighbors.

Control of the Economic Conditions. The economic conditions of life seem at first sight as relentless as the mills of the gods. Under the dominance of our *laissez faire* philosophy we were led to think that economic conditions were quite unalterable by the effort of man. However, while it is true that it is very difficult for society to control the cycles of business, the world market, and the organization of industry, it has been found possible to ameliorate unemployment, to provide against absolute need, to give vocational guidance to children, and to provide education such as will afford our youth a larger opportunity at economic independence.

It has been suggested that the Civilian Conservation Camps in this country under the New Deal may have had a good deal to do with the gradual drop in commitments to penal and correctional institutions during the early thirties, in spite of the severe economic depression and the consequent disorganization of community, family, and personal relations. When I expressed several years ago to German prison officials astonishment at the decrease of commitments to German prisons, they said that the dole and the organization of German youth in various youth organizations had had much to do with it.

Further experience will doubtless suggest ways more effective than any yet found of directing the economic factors to the up-building of character rather than to its destruction.

Direction of the Social Factors That Play upon Personality. Consider how suggestion, tradition, custom, ideals, and public opinion press upon us like an atmosphere and control us. No less truly do the customs, traditions, and ideals of the smaller group in which we associate, which sometimes are at variance with the social standards of the larger group, make for criminality. These are man-made and therefore may be changed by man. Society's duty, therefore, is by education to bring into accordance with the mores of the great society the standards of the component group. In short, any program of prevention must attempt to socialize our fundamental institutions. The home, the playground, the neighborhood, schools, churches, courts, business, and politics must be organized with reference to their effect upon developing personalities. No matter what else they do, unless they contribute to the development in childhood and youth of those attitudes that make for compliance with social norms of conduct, they have outlived their usefulness and may be distinct menaces

to social welfare. The struggle with crime will not be successful until they do so, and efforts at prevention must be centered upon these important factors in the social development of each individual.

THE CHALLENGE OF CRIME

We have seen that for fifty years or more crime in the United States has been of grave proportions. In our great cities and on our highways people are held up and robbed, even killed if they resist. Women are attacked and murdered. Adults and children are kidnapped for ransom. The same young men appear in these escapades again and again. They seem to bear charmed lives. The law holds few terrors for them. Against them the police and judges are sometimes impotent, although our prisons and reformatories are filled with an army of the less successful. Highly placed business men enrich themselves by plundering the stockholders of their corporations. Some corporation lawyers grow rich in devising methods whereby their wealthy and conscienceless clients defraud thousands and yet evade punishment. Our agents of justice often are defeated. The law sets limits to the penalty; technicalities clog the machinery; hence the legal dawdling and the consequent frequent escape of a rascal whom every one believes guilty. Definite sentences let out the unreformed. Soft-headed, sentimental, and politically motivated governors and boards pardon human wolves. Untrained parole and probation officers and political boards with friends release miscreants. Our laws offer only a measure of social protection. Unwhipped villainy struts about with impunity, defiant of the law and its agents, the cynosure of weak and silly youth thirsting for cheap heroics. The situation is a challenge to all good citizens. Our lives are in constant jeopardy. Our property is unsafe. Virtue is threatened.

Consider also the waste of the ugly business. What could we not buy with the money crime costs us? When from a twentieth to a tenth of all taxes go for our struggle against crime without throttling it, something is wrong. When an army of people who live by crime in this country, in spite of an unusual death-rate among them and in the face of our efforts at deterrence and reformation, shows little diminution owing to constant recruiting from our children and youth, it should make us pause and think.

The situation challenges every patriotic citizen not wholly dead to the welfare of his country. Society itself is menaced. Every leader of men, every maker of opinion is faced by the seriousness of the problem. The social-climber club woman will respond, "Why it is necessary to think of such horrid things in this beautiful world?" The teacher, who conceives of her function as "keeping school," the professor who looks upon his college class as a necessary evil rather than a great opportunity to mold the new generation, will not be disturbed by the crime situation. The clergyman, busy with getting people to heaven, or engrossed in theological or ecclesiastical controversy, will be as deaf to this call as were the Israel-

ites to Amos or the Scribes to Jesus. The politician-lawmaker, with his eye upon the votes in the next election, will not take the lead in this matter. The money-mad business man, intent upon the game of gain, whose patriotism is spelled "profits," we can hardly expect to hear the challenge. The lawyer, tender to hoary precedent, or busy devising new tricks to circumvent the intent of the law, to whom the law is not an instrument of justice but a great indoor sport and the road to wealth—we cannot count upon him in this fight. The fee-seeking defender of pimps, gamblers, bootleggers, crooks, thievish corporations, and sly grafters will be deaf to this clarion call of duty. The judge without imagination, to whom the authority of precedent is greater than that of science or of the laws of God, who enjoys being an umpire in a game rather than a minister of justice, will scoff at the challenge. But let every one who loves humanity or cares for our national future, who knows that social institutions may be changed for the better, who believes that conditions are modifiable, that man can mold his environment and control to a greater degree his destiny, answer the challenge. Responsibility for the continuance of this situation is his. With the zeal of a prophet, the calmness and patience of a scientist, and the relentless perseverance of a Hebrew Jahveh or a Greek Nemesis let each resolve to do his part in the solution of this great social problem.

QUESTIONS AND EXERCISES

1. Show why it is necessary in a rational program for the treatment of the offender that science should be consulted. What sciences should be consulted?
2. Study the court system of your state and criticize it in the light of the discussion of the courts in this and previous chapters.
3. Show how in some detail the public school should be socialized to make it preventive of crime.
4. Work out a program by which the church can more adequately prevent crime.
5. Suggest changes in the conduct of business that would prevent crime.
6. Work out a program of the things you can do to help in the struggle against crime.
7. Discuss the practicability of the federal government's taking over more of the job of detecting and apprehending criminals.

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